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REPORT ON INTERNATIONAL AND NATIONAL LEGISLATION FOR THE CONSERVATION OF MARINE MAMMALS

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Part 1. International Legislation

by

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
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PREPARATION OF THIS DOCUMENT

The Seventh Session of the FAO Committee on Fisheries (COFI) decided that FAO should sponsor a scientific study of whale resources and management problems and also of the status of seals, porpoises and other marine mammals. In response to this decision the FAO Advisory Committee on Marine Resources Research established a Working Party on Marine Mammals to carry out this work.

The Working Party decided that it required background information on the nature and application of pertinent existing international and national legislation regarding marine mammals and requested FAO to arrange for the compilation of the available information. The present document summarizes the international legislation. A second part, concerning national legislation, will be issued later.

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A vehicle for distribution of short or ephemeral notes, lists, etc., including provisional versions of documents to be issued later in other series.

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INTRODUCTION

A Planning Consultation of the FAO/ACMRR Working Party on Marine Mammals held in Vancouver on 15 and 16 February, 1973, requested FAO "to compile information about the nature and application of pertinent existing national and, where necessary and practicable, local as well as international legislation."

Mr. Michel J. Savini, Assistant-Professor at the University of Nice (France) who had already worked for FAO on national and international legislation related to fisheries was engaged as a consultant to carry out the proposed study.

A circular letter was sent by the Director-General of FAO to 105 countries requesting them to provide the following documentation:

"(i) any national, state or provincial laws providing for the conservation of marine mammals (in particular, whales; dolphins, porpoises and other small cetacea; seals, sealions, walruses, sea elephants, etc; dugongs and manatees; sea otters) and any national, state, provincial and local regulations implementing those controls;

(ii) any legislation, including regulations, providing for the conservation of river dolphins;

(iii) any legislation, including regulations, establishing or providing for the management and regulation of marine reserves;

(iv) any comments on the application and implementation in practice of the above legislation;

(v) copies of any bilateral agreements for the conservation of marine mammals to which the Government is Party."

By the end of February 1974, replies had been received from 49 countries.(1)

This part of the report covers the main international bodies or conventions dealing with the conservation of marine mammals. The second part, concerning national legislation will be issued as soon as the relevant documentation has been received from all major countries engaging in the exploitation and harvesting of marine mammals.

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(1) Australia, Belgium, Brazil, Canada, Costa-Rica, Cuba, Cyprus, Denmark, El Salvador, Ethiopia, Finland, France, Germany (Fed.Rep.of) Guatemala, Guyana, Ireland, Israel, Italy, Korea (Rep.of), Liberia, Libyan Arab Republic, Maldives, Malta, Mexico, Morocco, Netherlands, Nicaragua, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Poland, Saudi Arabia, Singapore, Spain, Sri Lanka, Sudan, Sweden, Syrian Arab Republic, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, U.K., Viet Nam, (Rep. of,) Yugoslavia.

1. CONVENTION ON NATURE PROTECTION AND WILD LIFE PRESERVATION IN THE WESTERN HEMISPHERE (1940)

I. GENERAL

On October 12, 1940 a number of American countries signed in Washington a Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere.[1/]

The purpose of the Convention is to protect and preserve in their natural habitat representatives of all species of the native fauna in sufficient numbers, and over areas extensive enough to assure them from becoming extinct through any agency within man's control.[2/]

The Pan-American Union (now O.A.S.) was designated as depositary.[3/] The Convention came into force on April 30, 1942.

II. MEMBERSHIP

The Convention remains open for signature by the American governments.

As at 1973, the Convention had been ratified by 17 States, viz., Argentina, Brazil, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Peru, Trinidad and Tobago, U.S.A., Uruguay, and Venezuela. Bolivia, Columbia and Cuba had signed but never ratified.

III. AREA OF APPLICATION

The Convention contains no provision specifying expressly the area to which it applies. In principle, under international law it would apply to the territories of the Contracting Parties, to the waters under their jurisdiction and to vessels flying their flags.

1/ UNTS No. 485

2/ Preamble

3/ Article XI

IV. SPECIES OF MARINE MAMMALS COVERED

The provisions of the Convention concerning national parks, national reserves and strict wilderness reserves applies generically to all fauna and thus would cover all marine mammals.

However, the protection of certain species mentioned in the annex is declared to be of special urgency and importance. This annex consists not of a single list but of a series of lists drawn up by each state according to its own view of the priority to be accorded to the protection of individual species. The following species of marine mammals have been included in one or more of these lists:

(a) Whales - Blue Whales (Balaenoptera musculus) (by Argentina and USA)
Right Whales (Eubalaena spp) (by USA)
Bowhead Whales (Balaena mysticetus) (by USA)
Grey Whale (Eschrichtius gibbosus) (by USA)

(b) Seals - South American Fur Seals (Arctocephalus australis)(by Argentina, Chile and Peru)
Galapagos Fur Seal (Arctocephalus australis galapagoensis) (by Ecuador)
Guadalupe Fur Seal (Arctocephalus philippi towsendi) (by USA)
Ribbon Seal (Histriophoca fasciata) (by USA)
Caribbean Monk Seal (Monachus tropicalis) (by USA)
Hawaiian Monk Seal (Monachus schaunslandi) (by USA)
Californian Sea Lion (Zalophus californianus wollebaeki) (By Ecuador)
Southern Elephant Seal (Mirounga leonina) (by Argentina and Chile)
Weddell Seal (Leptonichotes weddelli) (by Chile)
Crabeater Seal (Lobodon carcinophagus) (by Chile)
Leopard Seal (Hydunga Leptonix (by Chile)

(c) Other Marine Mammals

West Indian Manatee (Trichechus manatus) (by Brazil, Costa Rica, Guatemala, Panama, Venezuela)
Florida manatee (Trichechus manatus latirostris) (by USA)
Amazon manatee (Trichechus inunguis) (by Brazil and Venezuela)
Southern Sea Otter (Enhydra lutris nereis) (by USA)

V. PROCEDURES FOR THE AMENDMENT OR ADOPTION OF NEW CONSERVATION MEASURES

All the conservation measures to be taken are set up in the body of the Convention itself. No provision is made for the amendment of the Convention.

The Annex listing the species of which the protection is declared to be of special urgency and importance is completed by each of the Contracting Governments.

VI. CONSERVATION MEASURES

(1) Measures concerning parks and reserves

Under the provisions of the Convention each Contracting Government undertakes at once to explore the possibility of establishing in their territories national parks, national reserves and strict wilderness reserves.[4]

A national park is defined as an area established for the protection and preservation of fauna of national significance which the general public may enjoy, and from which it may benefit when placed under public control. A national reserve is defined as a region established for conservation and utilization of natural resources under government control, in which protection of animal life will be afforded in so far as this may be consistent with the primary purpose of such reserves. A strict wilderness reserve is defined as a region under public control characterized by primitive conditions of fauna, transport, and habitation wherein there is no provision for the passage of motorized transport, and where all commercial development is excluded.

The establishment of such parks and reserves is to be notified to the Pan American Union (OAS).

Under the Convention the Contracting Governments agree:

- to prohibit the commercial exploitation of the species living in national parks;[5]
- to prohibit hunting, killing and capturing of members of the fauna in national parks, except by or under the direction or control of the park authorities, or for duly authorized scientific investigation;[6]
- to maintain the strict wilderness reserves inviolate, as far as practicable, except for duly authorized scientific investigations or government inspection, or such uses as are consistent with the purposes for

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4/ Article II
5/ Article III (par.1)
6/ Article III (par.2)

which the area was established.[7]

In fact a comparative study of national legislation shows that a few countries only in the region have implemented the provision of the Convention concerning national parks. The provisions relating to the establishment of other types of protected areas, provided for by the Convention, appear not to have been implemented to any great extent.[8]

As for fauna outside parks and reserves, the Contracting Governments agree to adopt suitable laws and regulations for its protection and preservation.[9]

(2) Measures concerning the species listed in the Annex

These species are to be protected as completely as possible, and hunting killing, capturing or taking of such species can be allowed only with the permission of the appropriate government authorities in the country. Such permission is to be granted only under special circumstances: in order to further scientific purposes, or when essential for the administration of the area in which the animal is found.[10]

Regarding international trade, each Contracting Government must take the necessary measures to control and regulate the importation, exportation and transit of these species or any part thereof, by the following means:

1. the issuing of certificates authorizing the exportation or transit of protected species or parts thereof;
2. the prohibition of the importation of any species or any part thereof protected by the country of origin unless accompanied by a certificate of lawful exportation.[11]

7/ Article IV

8/ See G. Kropp: "Wildlife and national parks legislation in Latin America" FAO Legislative Studies No. 2, Rome, 1971, p.18.

9/ Article V.

10/ Article VIII

11/ Article IX

2. INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING (1946)

I. GENERAL

The objective of the States who signed the 1946 International Convention for the Regulation of Whaling[12] was to establish a system of international regulation for whale fisheries, to ensure proper and effective conservation and development of whale stocks, as well as make possible the orderly development of the whaling industry.

A schedule containing detailed regulations for the conduct of whaling operations is appended to the Convention.

An International Whaling Commission (IWC)[13] is empowered to amend the schedule from time to time by adopting further regulations with respect to the conservation and utilization of whale resources, fixing:

(a) protected and unprotected species
(b) open and closed seasons
(c) open and closed waters indicating the designation of sanctuary areas
(d) size limits for each species
(e) time, methods and intensity of whaling (including the maximum catch of whales to be taken in any one season but not involving restrictions on the number or nationality of factory ships and land stations, or to any group of factory ships or land stations)
(f) type and specification of gear and apparatus and appliances which may be used
(g) methods of measurement.
(h) catch return and other statistical and biological records
(i) methods of inspection[14]

12/ UNTS vol. 161, No.2124, page 24.

13/ Established by Article III of the Convention. It should be noted that at the 25th meeting, the U.S. delegation circulated a memorandum setting out proposals for amending the Convention. See the Chairman's Report of the 25th meeting, paragraph 19.

14/ Article V of the 1966 Convention as amended by Article II of a protocol signed in Washington on November 19th, 1956 (UNTS Vol. 338, page 366)

II. AREA OF APPLICATION

The Convention applies to factory ships, land stations and whale catchers under the jurisdiction of the Contracting Governments, and to all waters in which whaling is prosecuted by such factory ships, land stations, and whale catchers.

III. MEMBERSHIP

In 1973, the member states of the Commission were: Argentina, Australia, Canada, Denmark, France, Iceland, Japan, Mexico, Norway, Panama, South Africa, U.S.S.R., U.K., U.S.A.

It is to be noted that certain member states do not undertake commercial whaling operations at all. On the other hand, there are other states who do undertake these operations but are not members of the Commission.

Since its creation the IWC has made repeated efforts to secure the participation or at least the co-operation of all countries with whaling interests. At the Twenty-Fourth Meeting (1972) this problem was considered by the Finance and Administrative Committee. The Committee noted that five countries whose whale catches were recorded in the Bureau of International Whaling Statistics reports were not members of the Commission. These were Brazil, Chile, Peru, Portugal and Spain.[15/] Brazil was at one time a member of the Commission but withdrew from the Convention in 1966. An appeal was made in 1965 to Chile and Peru to adhere to the Convention but without success. In 1972, the Committee took the view that the time had come, particularly in view of the present world-wide concern about the conservation of whale stocks, for a further approach to these countries as well as appeals to other non-member countries. The Commission accepted the Committee's recommendation that the Chairman of the Commission should make this approach, and that member countries should be urged to reinforce this action through the diplomatic opportunities available to them. The Commission also adopted a resolution that the Secretary-General of the U.N. be asked to address all member nations engaged in whaling activities who are not members of the International

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15/ Three of these states have frequently attended the meetings of the Commission as observers.

Whaling Convention to adhere to it as soon as possible following the spirit of the UN Conference on Human Environment.[16/]

IV. SPECIES COVERED BY THE CONVENTION

The Convention itself uses the general expression "whales" or "whale resources." From a biological point of view these terms would not appear to cover all the cetaceans. However, at its 24th meeting the Scientific Committee proposed that a sub-committee on small cetaceans be set up to improve data collection on all world catches of these animals and to review species and stock identification and other problems.[17/]

The schedule annexed to the Convention contains a series of definitions designed to clarify the terminology employed. However, in 1960 the Commission stated that this enumeration did not exclude other species not so defined, and that all whales were covered by the wording of the Convention.[18/]

V. PROCEDURE FOR THE ADOPTION AND ENTRY INTO FORCE OF REGULATORY MEASURES

According to a common procedure amongst fisheries bodies the adoption of an amendment to the schedule necessitates a three-quarter majority of those members voting, and the amendment becomes effective with respect to all Contracting Governments which have not presented objections within a specified period. It does not become effective with respect to any government who has so objected until such date as the objection is withdrawn.

The two following charts give a picture of the frequency of modifications to the schedule and the frequency in the usage of the objection procedure:

16/ IWC Chairman's report of the twenty-fourth meeting, paragraph 12.

17/ Chairman's Report of the Twenty-Fourth meeting, paragraph 22.

18/ IWC Twelfth Report, page 21.

I. MODIFICATIONS TO THE SCHEDULE

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1949						x	x			x							x	
1950						x		x										
1951						x	x	x	x	x		x	x					x
1952						x		x										
1953				x	x	x	x	x		x		x						x
1954				x		x	x		x	x								
1955				x	x		x	x										
1956								x										
1957					x			x			x							
1958						x		x										
1959	x			x	x	x	x									x	x	
1960						x	x	x										
1961						x	x		x									
1962					x													
1963	x				x	x		x										
1964		x		x	x				x									
1965				x		x		x										
1966						x	x	x										
1967						x		x	x									
1968	x							x										
1969				x		x		x										
1970				x	x	x	x	x	x		x		x					x
1971	x							x										
1972				x	x	x		x	x		x							
1973				x		x	x	x	x	x					x		x	

II. USAGE OF THE OBJECTION PROCEDURE

Date and No. of meetings	Paragraph and contents	Objecting States	Later developments
12th meeting 1960	6(2)(b) and 6(3)(a) Various restrictions in hunting of humpback in certain areas south of 40° south latitude	Japan Norway Netherlands U.K. USSR	U.K. withdrew its objections 26 February 1963; Japan on 5 March 1963. At the 15th meeting (1963) the Commission deleted sub-paragraph 6(2)(b) and amended sub-paragraph 6 (3)(a)
12th meeting 1960	7(a): reduction by two weeks of the season for taking blue whales in any water south of 40° south latitude	Japan Norway Netherlands U.K. USSR	This sub-paragraph was partly amended at the 15th meeting of the Commission (1963). At its 18th meeting (1966) the Commission deleted the contested provision which in any case was superseded by the coming into force of the new draft of alinea 6(3)
12th meeting 1960	8(a) Suppression of the blue whale unit (BWU) catch limit on baleen whales taken by factory ships in waters south of 40° south latitude	Japan USSR	Japan withdrew its objection on 19 December 1961 USSR withdrew its objection on 9 April 1962
16th meeting 1964	6(3): Prohibition to kill or attempt to kill blue whales south of 40° south latitude	Japan Norway U.K. USSR	Japan withdrew its objection on 1 October 1965, Norway on 20 October 1965, U.K. on 29 October 1965 and USSR on 10 September 1965
17th meeting 1965	6(5): Prohibition to use a whale catcher attached to factory ship for the purpose of killing or attempting to kill sperm whales in the waters between 40° south latitude and 40° north latitude	Japan USSR Norway	Sub-paragraph deleted by the Commission at its 25th meeting
23rd meeting 1971	8(j) Global catch limit for taking sperm whales in the area south of the Equator, and between 20° East longitude and 70° east longitude	Japan USSR	Sub-paragraph deleted by the Commission at its 24th Meeting

Date and No. of meetings	Paragraph and contents	Objecting States	Later developments
25th meeting 1973	8(a) maximum catch of minke whales	Japan USSR	Objection not withdrawn
25th meeting 1973	8(h) division of the catch limit of sperm whales into areas	Japan USSR	Objection not withdrawn
25th meeting 1973	8(a) cessation of the taking of fin whales after June 1976	Japan	Objection not withdrawn

VI. REGULATORY MEASURES

They are summarized in the charts overleaf.

VII. ENFORCEMENT

1. The 1963 agreement

Controls relating to the application of provision of the Convention and schedule are a matter in the first place for the individual member states.

Article IX of the Convention provides expressly that each Contracting Government shall take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions in operations carried out by persons or by vessels under its jurisdiction.

In more concrete terms, the Schedule requires Contracting Governments to maintain on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four hour inspections, provided that at least one such inspector be maintained on each catcher functioning as a factory ship. These inspectors are appointed and paid by the government having jurisdiction over the factory ship.

However, certain governments hoped to reinforce these national controls by a system

INTERNATIONAL WHALING COMMISSION

	ALL WHALES								
	ALL BALEEN WHALES								TOOTHED WHALES
	BALAENIDAE (Right whales)	ESCHRICHTIDAE (Gray whales)	BALAENOPTERIDAE						PHYSETERIDAE
	Balaena mysticetus, Eubalaena spp. (glacialis and australis), Neobalaena marginata	Eschrichtius (or Rhachianectes), glaucus (or gibbosus or robustus)	Balaenoptera (or Sibbaldus) musculus (Blue whale)	Megaptera nodosa (or novaeangliae) (Humpback whale)	Balaenoptera physalus (Fin whale)	Balaenoptera borealis (Sei whale) and Balaenoptera edeni (or brydei) (Bryde whale)		Balaenoptera acutorostrata (or davidsoni or huttoni) (Minke whale)	Physeter catodon (Sperm whale)
Protection of females and young (3)	It is forbidden to take or kill calves, suckling whales or female whales which are accompanied by calves or suckling calves								
Rules concerning remuneration of gunners and crews (14)	Gunners and crews of factory ships, land stations and whale catchers shall be engaged on such terms that their remuneration depends to a considerable extent upon such factors as species, size and yield of whales taken and not merely upon number of whales taken. No bonus or other remuneration shall be paid to gunners or crews of whale catchers in respect of taking milk-filled or lactating whales.								
Rules concerning processing and treatment (12b,c; 13a)	All whales (except minke whales) taken shall be delivered to factory ships or land stations and all parts of such whales shall be processed by boiling or otherwise (except internal organs, whale bone and flippers of all whales, meat of sperm whales and parts of whales intended for human food or feeding animals). A contracting government may in less developed regions exceptionally permit treating of whales without use of land stations, provided such whales are fully utilized. Complete treatment of carcasses of "dauhval" and of whales used as fenders will not be required in any cases where the meat or bone of such whales is in bad condition. The taking of whales for treatment by a factory ship shall be so regulated or restricted that no whale carcass (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for longer than 33 h from time of killing to time when hauled up for treatment.								
Complete prohibition to take or kill (2,4,6,8a)	Yes - Except by aborigines for local consumption		Yes	Yes (small exception in Greenland waters)	Yes but after 30/6/76				
Areas closed to pelagic whaling (use of factory ship or whalecatchers attached thereto (4(2))					Waters N of 66°N lat. (except from 150°E long. eastward as far as 140°W long. between 66°N - 72°N lat. Atlantic Ocean and dependent waters N of 40°S lat. Pacific Ocean and dependent waters E of 150°W long. between 40°S - 35°N lat. Pacific Ocean and dependent waters W of 150°W long. between 40°S - 20°N lat. Indian Ocean and dependent waters N of 40°S lat.				
Minimum sizes (9(a) (b), (c))					S.Hemis. 57 f (17.4 m); 55 f (16.8 m) for delivery to land stations for local consumption. N.Hemis. 55 f (16.8 m); 50 f (15.2 m) for delivery to land stations for local consumption	40 f (12.2 m) 35 f (10.7 m) for delivery to land stations for local consumption			All areas except North Atlantic Ocean: 35 f (10.7 m)
Seasons for pelagic whaling (7(a), 7(d,e), 7(c))					12 December to 7 April (in waters south of 40°S lat.)			Continuous open season established by each government not to exceed six months (eight months for Greenland) out of any 12 months	Continuous open season established by each government for not more than eight months in any 12 months
Seasons for whaling from land stations (10(b),10(d),10(e))					Open season established by each government for a period of not more than six consecutive months in any period of 12 months			Open season established by each government for not more than 6 continuous months in any 12 months	Open season established by each government for not more than 8 continuous months
Quota (8(a),(e), (f),(g),(h))					1 450 in waters S of 40°S lat. To reduce to 0 after 3 years 550 in North Pacific Ocean and dependent waters excluding East China Sea	4 500 in waters S of 40°S lat. 3 000 in the North Pacific Ocean and dependent waters		5 000 in waters S of 40°S lat.	8 000 males and 5 000 females in S. Hemisphere. 6 000 males and 4 000 females in North Pacific Ocean and dependent waters
Rules concerning re-deployment of factory ships (11) (Numbers in brackets refer to schedule paragraphs)					It is forbidden to use a factory ship which has been used during a season in any waters S of 40°S lat. in any other area except in North Pacific Ocean and dependent waters North of equator within a year from termination of season				

Seasons	Permitted length of season	Average catching days	Total catch	Quota
	..... Number of days		..... Blue-whale units	
7.I.1957 - 16.III.1957	69	69	14 745.2	14 500
7.I.1958 - 16.III.1958	69	69	14 850.9	14 500
7.I.1959 - 16.III.1959	69	69	15 300.8	15 000
28.XII.1959 - 7. IV.1960	102	99	15 511.7	15 000
28.XII.1960 - 7. IV.1961	101	95	16 433.5	—
12.XII.1961 - 7. IV.1962	117	115	15 252.6	—
12.XII.1962 - 7. IV.1963	117	110	11 306.1	15 000
12.XII.1963 - 7. IV.1964	118	111	8 429.0	10 000
12.XII.1964 - 7. IV.1965	117	104	6 986.6	8 000
12.XII.1965 - 7. IV.1966	117	103	4 090.9	4 500
12.XII.1966 - 7. IV.1967	117	97	3 511.8	3 500
12.XII.1967 - 7. IV.1968	118	101	2 803.7	3 200
12.XII.1968 - 7. IV.1969	117	99	2 472.6	3 200
12.XII.1969 - 7. IV.1970	117	97	2 477.2	2 700
12.XII.1970 - 7. IV.1971	117	95	2 470.5	2 700
12.XII.1971 - 7.IV. 1972	118	102	2 252.4	2 300
12.XII.1972 - 7. IV.1973	117	104	1 533.5	1 808

Extract from FAO Yearbook of Fishery Statistics, Vol.34, 1972, p.487

of international control. In order to allow the Commission to take the necessary steps, Article 5 of the 1946 Convention was amended by the Protocol signed in Washington on November 19th, 1956. At its 15th meeting (in 1963) the Commission amended Article 1 of the schedule adding to national inspectors such observers as the member countries engaged in Antarctic pelagic whaling may arrange to place on each other's factory ships.

The same year[19] the five states engaged in Antarctic pelagic whaling (Japan, Netherlands, Norway, U.K., USSR) signed an agreement concerning an international observer scheme for factory ships engaged in pelagic whaling in the Antarctic.[20]

In 1964 these five countries agreed upon the rules for the implementation of the international observer scheme.[21] However, certain States agreed to apply the scheme only on condition that:

- it extended to the land stations;
- national catch quotas be revised.

The other signatory States were unwilling to accept these conditions and the 1963 Agreement expired without having been applied.[22]

2. The 1971 Observer Scheme

Later, by a decision of the 18th meeting of the Commission, a special working group was established in order to draw up an international observer scheme or schemes to cover all whaling operations. The report of this working group concluded that it would be preferable to have a number of separate schemes rather than a single all-embracing scheme. The majority of the group considered that separate schemes might have the following coverage:[23]

1. Antarctic pelagic whaling expeditions.
2. Pelagic whaling in the North Pacific.
3. Land stations in the North Pacific.
4. Land stations in the Southern Hemisphere
5. North Atlantic.

19/ 29th October 1963

20/ IWC Fifteenth Report, p.23

21/ IWC Seventeenth Report, p.21

22/ IWC Eighteenth Report, p.17

23/ IWC Nineteenth Report, p.21

At its 20th Meeting the Commission amended the schedule according to these recommendations, but at the 23rd meeting, in spite of the urgent requests by the Commission, no agreement was concluded between member states, and the Chairman of the Commission invited all the member nations engaged in whaling to a special meeting to consider measures implementing an international observer scheme. The Commission endorsed the following recommendation formulated by the special meeting:

"(i): All member countries should implement an international observer scheme for the 1971/72 season.

(ii): It should be carried out on a regional basis as follows:

(1) The North Pacific, (2) Antarctic pelagic, (3) North Atlantic and (4) Southern hemisphere land stations. The interested governments should meet to work out details in the very near future to be signed at a later date.

(iii): Amendments to the schedule were proposed in order to facilitate an early implementation of the Scheme". 24/

Thereafter, the Commission added a new paragraph to Article 1 of the Schedule:

"There shall be received such observers as the member countries may arrange to place on factory ships and land stations or groups of land stations of other member countries. The observers shall be appointed by the Commission and paid by the government nominating them."

In 1971 three agreements were signed.

The first one was concluded for a period of one year between Japan, USSR and Norway and applied to pelagic whaling in Antarctica. It could not be applied effectively because of the immediate departure of the Soviet factory ships while the agreement was initialled but not yet ratified.25/

The second, concluded between Japan and USSR concerned pelagic whaling in the North Pacific. It entered into force on 26th April 1972[26/] and expired on February 28th, 1973.[27/]

24/ IWC Twenty-third Report, p. 22

25/ Herald Tribune, 8th October 1971

26/ IWC circular communicated to Commissioners and Contracting Governments on 10th May 1972.

27/ Marine Fisheries Review, May/June 1972, Vol. 34, No. 5-6, p.51.

The third, concluded between Australia and South Africa, concerned the Southern hemisphere land station. The Contracting Parties have agreed that the agreement shall operate only while a similar scheme is operative between the Northern hemisphere members of the IWC engaged in whaling.[28/]

3. The present Observer Schemes

In 1972 the tripartite agreement between Japan, Norway and the USSR concerning pelagic whaling in the Antarctic was re-negotiated and finally concluded on June 27th 1972. It remained in force until 31st August 1973.[29/]

Two agreements concerning land stations were also concluded.

The first, concluded in Tokyo on April 26th, 1972 between USA and Japan concerned the North Pacific land station. It remained in force until February 28th, 1973.[30/]

The second signed on April 7th 1972 by Canada, Iceland and Norway came into force on April 14th, 1972 and concerned the North Atlantic land stations.[31/]

As at the end of 1973 the position with regard to the observer schemes was as follows:

(i) that between Canada, Iceland and Norway has been continued in 1973
(ii) that between Japan and the USA was renewed for 1973
(iii) that between South Africa and Australia has been continued in 1973
(iv) a new agreement was concluded between Japan, Norway and USSR for the 1973/74 Antarctic pelagic whaling season
(v) a new agreement was concluded between Japan and the USSR for the 1973 pelagic whaling season in the North Pacific.

Although there were minor differences in these various observer schemes, the general pattern was similar:

Each government has the right to nominate to the Commission a certain number of observers. From the persons so nominated the Commission appoints an observer to each expedition (or land station) under the jurisdiction of signatory governments. The observers have the status of senior officers. Detailed measures are provided to ensure

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28/ Article IV(b) of the Agreement
29/ Article 7 of the Agreement
30/ Article 6 of the Agreement
31/ Marine Fisheries Review, May/June 1972, Vol.34, No. 5-6, p.51

their security and welfare in the performance of their duties. The observers are at all times responsible only to the Commission and neither seek nor receive instructions from any authority other than the Commission. They are not invested with any administrative power in regard to the activities of the expedition (or land station) to which they are appointed.

They must be able to observe freely the operations of the expedition (or land station) so that they may verify the observance of the provisions of the Convention and its Schedule in regard to the taking of whales and their rational utilization.

When an observer has reasonable grounds for believing that any infraction has taken place he must notify immediately in writing the manager of the expedition (or land station) and the senior national inspector for information and comments.

At the end of the season (or part of the season he served as an observer) the observer draws up a report covering his observations. This report, with explanations and comments by the manager of the expedition (or land station) and by the senior national inspector is to be transmitted to the Commission as soon as possible.

3. INTERNATIONAL CONVENTION FOR THE NORTH WEST ATLANTIC FISHERIES (1949)

1. The objective of the International Convention for the North-West Atlantic Fisheries signed in Washington on February 8th, 1949 [32] is to make possible the maintenance of a maximum sustained catch from the fisheries of this area. [33] It established a Permanent Commission which is responsible in the field of scientific investigation for obtaining and collecting the information necessary for maintaining the stocks. The Commission is also entrusted with regulatory powers which have been recently enlarged. [34]

Under these enlarged powers, it may, on the basis of scientific investigations, and economic and technical considerations, transmit proposals designed to achieve the optimum utilization of the stocks of those species of fish which support international fisheries in the Convention area. [35]

In its initial form the Convention did not apply to sealing and, in this respect, the only international regulation in force in the area was an informal agreement between Canada and Norway (latterly approved by the USSR) fixing the opening and closing dates for seal-hunting in Newfoundland waters. [36]

The decreasing stock of seals and the fact that other nations were expanding their activities in this area called for further international regulations. At its 1961 meeting the Commission requested the depositary government (USA) to formulate and circulate to the member governments an amendment to the Convention providing that:

(a) harp seals and hood seals of the North West Atlantic area be brought under the provision of the Convention;

(b) a separate panel be established for the purpose of dealing with the conservation requirements of the harp and hood seal population.

32/ UNTS, Vol. 157, No.2053, p.157. The Convention entered into force on July 3rd, 1950.

33/ It should be noted that these terms of reference appear to exclude the intervention of the Commission in humanitarian problems. In fact, in response to numerous interventions from non-governmental organizations (International Society for the Protection of Animals, Ontario Human Society, World Federation for the Protection of Animals, Comité d'Action pour le sauvetage des phoques, European Committee for the Protection of Seals) the President of Panel 4 (Seals) of the Commission stated that action with regard to humanitarian considerations would have to be taken by governments outside the Commission. (ICNAF Annual Meeting, June 1967, Proceeding No.7, p.3).

34/ By a Protocol made in Washington on October 1st, 1969 which came into force on December 15th, 1971.

35/ Article .

36/ Judith King: "Seals of the World", London, 1964, p.64

The Protocol amending the Convention was signed on 15th July 1963 and entered into force 29th April 1966. At its 1966 meeting the Commission established a panel, (Panel A) with Canada, Denmark and Norway as members to deal with the harp and hood seal stocks.

II. MEMBERSHIP

In 1973 the member states of the Commission were: Canada, Denmark, France, Germany (Fed.Rep.of), Iceland, Italy, Japan, Norway, Poland, Portugal, Romania, Spain, U.K., U.S.A., U.S.S.R.

There are no restrictive conditions limiting accession to the Convention.

The three states effectively engaged in sealing operations in the Convention Area (Canada, Denmark and Norway) are members of Panel A.

The Convention empowers the Commission to review annually its panel representation on the basis of current substantial exploitation of harp and hood seals in the Convention Area.[37/]

III. AREA OF APPLICATION

The Convention applies to all waters of the North West Atlantic[38/] except territorial waters.

It should be noted that the habits of seal herds do not fit in with the exclusion of territorial waters from the scope of the Convention. In fact, it may be noted that the regulatory measures concerning sealing operations apply to two areas called "The Gulf Area" and the "Front Area" defined as:

- Gulf Area: all the waters and territories west of a straight line between the lighthouse at Amour Point on the coast of Labrador, and the lighthouse on Flowers Island in the Flowers Cove (Newfoundland).

37/ Article IV(2) is amended by a Protocol of 1st October 1969

38/ The area is defined in detail by Article I of the Convention.

- Front Area: All the waters of the Strait of Belle Isle and the Atlantic Ocean east of a straight line between the lighthouse of Amour Point on the East Coast of Labrador and the lighthouse of Flowers Island in Flowers Cove (Newfoundland).[39]

It should also be noted that Canada has been requested by the Seal Assessment Working Group to report catches of harp and hood seals taken from part of the North West Atlantic outside the ICNAF area.[40]

IV. SPECIES OF MARINE MAMMALS COVERED BY THE CONVENTION

In a general way the Convention employs the terms "fish", "fishery", "fishing" which in the strictly biological sense would seem to exclude marine mammals. In fact, the Commission has never concerned itself with the whale stock which inhabit the Convention Area, and it has no contact with the IWC. However, as noted above the Convention now covers harp and hood seals.[41]

V. ADOPTION, AMENDMENT AND ENTRY INTO FORCE OF REGULATORY MEASURES

Each proposal made by the Commission becomes effective for all contracting governments six months after the date of its notification to the Contracting Governments.[42] According to a procedure now generally adopted by international fishery bodies, the Governments can, within a time limit, lodge objections. Governments who have lodged an objection are not bound by the proposals to which they have objected.

VI. REGULATORY MEASURES

Annual international regulations concerning sealing in the Convention area are itemized in the chart overleaf.

39/ ICNAF, Annual Meeting, 1967, Report of the meeting of Panel A. Comm. Doc. 67/7, p.1

40/ ICNAF, Annual Meeting, 1967, Proceeding No.7, Appendix I, Annex I, p.2.

41/ Article I of the 1963 Protocol amending the 1949 Convention.

42/ 25th November 1965 Protocol to the 1949 Convention relating to entry into force of proposals adopted by the Commission. The Amendment of Article VIII of the 1949 Convention by the Protocol of 25th November 1965 seemed to contradict Article III of the Protocol of 25th July 1963 relating to harp and hood seals which provided that "Proposals in accordance with Article VIII of the Convention for joint action by the Contracting Governments with respect to harp and hood seals shall become effective for all Contracting Governments four months after the date on which notification of acceptance has been received by the depositary government from all the Contracting Governments in the panel for harp and hood seals." At its 20th Meeting the Commission unanimously adopted a proposal to put on record its understanding that the six months period as dictated by the Protocol relating to entry into force of proposals adopted by the Commission applied to proposals relating to harp and hood seals. (ICNAF Annual proceedings, Vol. 20, p.20).

Sealing Season	Closed Season	Catch Quotas
1968	Species: Harp and hood seals Area: Front and Gulf Dates: 12 March-25 April (Proposal (xxi) of the Commission).	
1969	Species: Area: Dates: (Established by an exchange of notes between Canada and Norway)	
1970	Species: Harp and hood seals Area: Front Dates: 22 March-29 April (Recommendation submitted by Panel A Members to their Governments)	
1971	Species: Harp and Hood Seals Area: Front and Gulf Dates: 12 March-24 April (Proposal (xxxii) of the Commission)	Species: Harp seals of all ages Area: Front and Gulf Quota: 245,000 including an allowance of 45,000 for the indigenous non-mobile fisheries. (Proposal (XXXii) of the Commission)
1972	Species: Harp and Hood seals Area: Front and Gulf Dates: 12 March-24 April (Proposal (xliv) of the Commission)	Species: Harp Seals Area: Front and Gulf Quotas: Canadian landsmen: 30,000 " vessels: 60,000 Norwegian " 60,000 (Recommendation submitted by Panel A Members to their Governments)
1973	I/Species: Harp seals Area: Gulf and front Dates: 12 March-24 April 2/Species: Hood Seals Area: Gulf and Front Dates: 20 March-24 April (Recommendation submitted by Panel A Members to their Governments)	Species: Harp Seals Area: Quota: Canadian landsmen: 30,000 " vessels: 60,000 Norwegian " : 60,000 (Recommendation submitted by Panel A Members to their Governments)
1974	I/Species: Harp Seals Area: Front Date: 12 March-24 April 2/Species: Hood Seals	I/Species: Harp Seals Area: Front Quota: Canada: 60,000 Norway: 60,000

..../....

Sealing Season	Closed season	Catch Quotas
1974 (contd.)	Area: Front Date: 20 March-24 April (Proposal (30) of the Commission)	Quota: Possible other participants in the seal fishery: 100 2/Species: Harp Seals Area: Front and Gulf Quota: 30,000 for the indigenous non-mobile fisheries 3/Species: Hood Seals Area: Front except West Greenland Quota: 15,000 (Proposal (30) of the Commission

It should be noted that for some years the regulations originate as formal proposals formulated by the Commission in conformity with Article VIII of the Convention. However, for certain years, either because of the lack of statistical data necessary, or because of the impossibility of reaching an agreement within the framework of the Commission, international regulations have been established under agreements concluded between the States concerned upon the recommendations of their own representatives in Panel A.

For the 1968 sealing season Panel A had considered recommending other measures which had been in force during the previous season as a result of an exchange of notes between governments (a prohibition against the use of helicopter or other air-craft in sealing operations, and a requirement to remove seal skins from the ice to the base of operations within 24 hours from the day the seals are killed), but these regulations could not be recommended under the provisions of Article VIII of the Convention as drafted at that time.

Similarly, for the 1971 season, Panel A recommended to the Commission a sharing of the total quota between Canada and Norway but the Commission could not approve this recommendation because the 1969 Protocol, enabling the Commission to recommend measures with regard to national catch quotas, was not yet in force.

The reduction of the permissible catch quota for the 1972 and the following seal seasons is the result of the scientific findings of the Assessment Sub-Committee which stated at its 1971 meeting that the stock was less than that giving the maximum

sustainable yield, and that therefore action should be taken to increase the stock, i.e., that the quota should be set at less than the present level. The Assessment Sub-Committee noted that the present ICNAF quota was well in excess of the sustainable yield even if the killing of all older seals stopped, and therefore the effect of maintaining this quota would be a progressive decline in the population, and the possible catch from it.[43/]

In addition to the yearly regulations concerning the sealing season, and the permissible catch quota, it should be noted that since the 1968 sealing season another measure has been annually recommended: the prohibition of killing adult harp seals in whelping patches in the Front Area. Since 1970 this measure has been extended to the Gulf Area.

VI. ENFORCEMENT

The 25th November 1965 Protocol to the 1949 Convention, relating to measures of control empowered the Commission to make proposals for national and international measures of control on the High Seas for the purpose of ensuring the application of the Convention, and the measures in force thereunder.

From 1967 the Commission recommended that the representatives of Canada, Denmark and Norway meet to discuss international inspection and possible joint enforcement procedures.[44/] At that time the representative from Norway said that his country was prepared to accept international inspection of its sealing operations provided that a satisfactory arrangement could be made with other sealing nations. He added that it would not be possible for Norway to place an inspector on board each Norwegian sealing vessel, and thus some joint enforcement scheme with Canada would be desirable.[45/]

Members of Panel A continued to discuss the problem at the time of the 1969 and 1970 meetings of the Commission.[46/] Subsequently, the Commission adopted a scheme of joint enforcement which came into effect on the 7th January 1971, and which applies

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43/ ICNAF Annual Meeting, June 1971. Report of a mid-year meeting of the Assessment Sub-Committee. Comm.Doc. 71/1, p.8

44/ ICNAF - Annual Proceedings, Vol. 17, p.28

45/ Report of the meeting of Panel A (12th October 1967). ICNAF Annual Meeting, June 1968, Proceeding No.2, Appendix III, p.2

46/ ICNAF Annual Meeting, June 1968, Proceeding No.2; ICNAF Annual Meeting, June 1970, Proceeding No.2, Appendix I.

to the whole Convention Area outside of fishery limits.[47/] According to this scheme, an inspector of the fishery control services of Contracting Governments may board any fishing vessel flying the flag of a member state of the Commission to make such examination of the catch, net or other gear, and any relevant document as the inspector deems necessary to verify the observance of such Commission's recommendations as are in force for the flag state of the vessel concerned. These inspectors draw up reports which are transmitted by the inspector's government to the appropriate authorities of the flag state of the vessel. Contracting Governments must consider and act on the report of foreign inspectors on the same basis as reports from national inspectors.

On the occasion of a mid-term meeting held in Charlottenlund on November 9th, 1972, the Panel A members discussed the need for improving the enforcement and control of sealing activities, and agreed that the reports on sealing activities by the national sealing inspectors should be exchanged as provided for under the ICNAF scheme of joint enforcement.

47/ ICNAF Annual Proceedings, Vol. 20, p.21.

4. AGREEMENTS OF THE CONFERENCE ON THE USE AND CONSERVATION OF THE MARINE RESOURCES OF THE SOUTH PACIFIC (1952 - 1967)

I. GENERAL[48/]

On August 18th, 1952, representatives from the three South American countries bordering the South-east Pacific area (Chile, Ecuador, Peru) met in Santiago (Chile), and signed the following instruments:

- A Declaration on the Maritime Zone;
- A Joint Declaration on Fishery Problems in the South Pacific;
- An Agreement on the Organization of the Permanent Commission of the Conference on the Use and Conservation of the Marine Resources of the South Pacific.

At a second Conference held in Lima, in 1954, the same three States signed:

- An Agreement Relating to the Issue of Permits for the Exploitation of the Maritime Resources of the South Pacific;
- An Agreement Relating to the Regular Annual Meetings of the Permanent Commission.

From 1952 to 1970 the Permanent Commission held 11 Ordinary meetings and one Extraordinary meeting at which it adopted several provisions regarding whaling,[49/] two of which may be regarded as basic texts:

- Regulations governing Whaling in the Waters of the South Pacific (adopted in Santiago in 1952 by the representatives to the Conference acting as a provisional Permanent Commission.[50/]

48/ See FAO Fisheries Technical paper No. 77 - Establishment, structure, functions and activities of international fisheries bodies; IV: Permanent Commission of the Conference on the Use and Conservation of the Marine Resources of the South Pacific, by F. B. ZENNY, Legislation Branch, and FAO Department of Fisheries, Rome, 1968.

49/ The following are the numbers of the resolutions (or proposals, or recommendations or agreements) adopted at those meetings: 2nd meeting:XI; 3rd meeting:VIII,IX; 4th meeting:III,IV,VI,VII,VIII; 5th meeting:I,II,IV; 6th meeting:IV,IX,X,XI,XII, XIII; 7th meeting:IV,V,VI,VII; 8th meeting:XIII; 9th meeting:X,XI; 10th meeting:III, XXIX; 11th meeting;XII.

50/ The IVth Conference held in Quito(1967) requested the Permanent Commission to study these regulations with a view to considering the possibility of amending them.

- Regulations on permits for the Exploitation of the Resources of the South Pacific (adopted at the third meeting of the Permanent Commission, Quito, 1955).

Under the Agreement on the Organization of the Permanent Commission, the latter is empowered inter alia :

(a) to determine protected species; open and closed seasons, and areas of sea; fishing and hunting time; methods of equipment; prohibited gear and methods; and to lay down general regulations for hunting and fishing;

(b) to study and propose to the parties such measures as it considers suitable for the protection, defence, conservation and use of marine resources;

(c) to encourage scientific and technical study of and research into biological phenomena in the South Pacific;

...

(h) to ensure that the fishing and hunting quotas fixed annually by each party in the exercise of its exclusive rights do not endanger the preservation of the marine resources of the South Pacific.[51]

Under the Regulation Governing Whaling, the Permanent Commission:

- may study and, in agreement with the Governments of the signatory states, decide upon any amendment to the rules prescribed by the Conference so far as it is not inconsistent with the provisions agreed upon by the Conference;[52]

- keepsa special register where land stations, whaling units, ships or vessels, crews and technical staff engaged in whaling are registered;[53]

- issuespermits for pelagic whaling in the maritime zone;[54]

51/ Article 3
52/ Article 1
53/ Article 3
54/ Article 4

- determines the amount of the annual catch of whale-bone whales for the South Pacific.[55]

Under the Agreement Relating to the Regular Annual Meetings of the Permanent Commission, the Commission:

- determines the quota of sperm whales which may be hunted by foreign pelagic whaling during the whaling season;[56]

- determines the amount of the fees chargeable during the year for the issue of permits to foreign pelagic whaling expeditions.[57]

II. MEMBERSHIP

The present membership of the Permanent Commission is the same as it was at the time of its establishment in 1952, namely, Chile, Ecuador and Peru.

None of the agreements or declarations of the four conferences, nor any of the resolutions or recommendations of the Permanent Commission, mention conditions to be fulfilled regarding eligibility for membership.

The three Contracting Governments decided, in 1955, to open the Declaration on the Maritime Zone for adherence by the states of the Americas.[58] However, adherence to Article 3, paragraph XI, which provides that Chile, Ecuador and Peru intend to sign agreements or conventions to put into effect the principles set forth in the Declaration, and to establish general regulations for the control and protection of hunting and fishing, is expressly excluded.

This provision seems to exclude the possibility for other States to adhere to the several Agreements regulating whaling.

55/ Article 20
56/ Article 1
57/ Article 2
58/ By a Protocol signed in Quito on October 6th, 1955.

III. AREA OF APPLICATION

The Agreement on the Organization of the Permanent Commission does not explicitly define a specific geographical area to be served by the Commission. It merely provides that the Permanent Commission is established in order to achieve the object set forth in the Declaration on the Maritime Zone.[59] This Declaration states that the three Governments proclaim as a principle of their international maritime policy that each of them possess sole sovereignty and jurisdiction over the area of the sea, the sea floor and the sub-soil thereof adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast.[60]

As to the area of sea beyond this 200 mile zone the position remains unclear. The 1952 regulations governing whaling provide that "whaling in the South Pacific, and more particularly in the maritime zone under the sovereignty and jurisdiction of the signatory states, shall be subject to the rules prescribed by the Conference.[61]

This wording would seem to suggest an intention on the part of the three countries to include in the geographic area covered by the Permanent Commission, that part of the South Pacific outside the special maritime zone.[62]

IV. SPECIES OF MARINE MAMMALS COVERED

Neither the Declaration on the Maritime Zone nor the Agreement on the Organization of the Permanent Commission refer to specific species.

These texts refer generically to "the marine fauna of the waters." The Permanent Commission is therefore certainly empowered to deal with all species of marine mammals.

In fact, although important herds of seals are to be found in its area of competence, the Commission deals only with whales.

59/ Article 2
60/ Article 3
61/ Article 1
62/ See FAO Fisheries Technical paper No. 77, op.cit., p.5

V. ADOPTION, AMENDMENTS AND ENTRY INTO FORCE OF REGULATORY MEASURES

The Agreement on the Organization of the Permanent Commission seems to make a distinction between:

- the agreements of the Conference, and
- the resolutions of the Permanent Commission.[63/]

In practice the successive meetings of the Conference[64/] and of the Permanent Commission[65/] have adopted texts of a very similar legal nature.[66/]

Approval of the draft reports and proposals submitted to the conference, requires an affirmative vote from all the official delegations accredited.[67/] The same rule applies to the meetings of the Permanent Commission.[68/]

The problem of the entry into force of the provisions adopted by the Conference or by the Permanent Commission is a little unclear. None of the texts[69/] produced by the conference provides for its entry into force.[70/] In fact, certain Contracting States seem to consider that ratification is not required for the entry into force of these

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63/ Article I

64/ Held in 1951, 1954, 1961, 1967

65/ Held in 1952, 1954, 1955, 1956, 1957, 1959, 1961, 1964, 1966, 1968, 1970.

66/ See: Instrumentos internacionales del pacifico sur Estudio Analitico del secretario general para 1o Xa reunion ordinaria de la Comision permanente del pacifico sur, Paracas (Peru), Diciembre 1968, p.9. On several occasions the representatives to the conferences agreed to act as Provisional Permanent Commission and produced regulations in that capacity. Two documents elaborated by the IV **Conference** were adopted following this procedure.

67/ Rule 16 of the rules of procedure adopted by the 1st Conference and which have regulated the successive conferences.

68/ At each of its meetings the Permanent Commission had resolved to adopt the rules of procedure of the conferences.

69/ They have been variously denominated: Declaration, Agreement (convenio), Protocol.

70/ It should be noted that Article XIII of the Convention Relating to the International Legal Status of the Permanent Commission of the South Pacific provides that "the Convention shall enter into force thirty days after the instruments of ratification of the three contracting states have been deposited." But this Convention was signed by the three States "during the IXth Ordinary Meeting of the Permanent Commission" and not at a meeting of the Conference.

instruments.[71]

The resolutions adopted by the Permanent Commission have mandatory effect forthwith in each Contracting State provided that a resolution to which a Signatory State lodges an objection within 10 days ceases to have effect in that State until the objection has been withdrawn.[72]

In fact the provisions adopted by the successive meetings of the Permanant Commission have been variously denominated: regulation (reglamento)[73] resolution, proposal, recommendation,[74] statute (estatuto),[75] agreement (acuerdo).[76] The Permanent Commission seems to consider that the entry into force of the instruments called "regulation" requires a formal ratification.[77] As to the "statutes" adopted in 1967 it was to enter into force when the Permanent Commission approved its next budget and the necessary funds for the operation of the statute were available.[78]

VI. REGULATORY MEASURES

The regulatory measures in force are itemized in the following chart. However, it seems that a great part of the 1952 regulations governing whaling had never been implemented either by the Permanent Commission or the States.[79]

71/ See: Conferencia sobre conservacion y exploitacion de las riquezas maritimas del pacifico sur - "Convenios y otros documentos, 1952-1968, Lima, 1968, p.87

72/ Article 4 of the Agreement on the Organization of the Permanent Commission.

73/ See : reglamento organico de la secretaria general (2nd Meeting of Permanent Commission)

74/ This wording is used in the preamble of the Final Acts of the meetings of the Permanent Commission.

75/ This wording was used by the delegates from the three States constituting themselves in provisional Permanent Commission during the IVth Conference (Quito 1967).

76/ See : the transitory provision appended to the "Statute of the General Secretariat" adopted in 1967.

77/ See : "Convenios y otros documentos 1952-1968", op.cit., p.7 and 8, and "Instrumentes internacionales del pacifico sur", op.cit., p.6

78/ Paragraph I of the transitory provisions (Convenios y otros documentos 1952-1968", op.cit p.156)

79/ See "Instrumentos internacionales del pacifico sur, op.cit, p.5 and 6.

PERMANENT COMMISSION OF THE CONFERENCE ON THE USE AND CONSERVATION OF THE MARINE RESOURCES OF THE SOUTH PACIFIC

	ALL WHALES						
	ALL BALEEN WHALES						TOOTHED WHALES
	BALAENIDAE (Right whales)	ESCHRICHTIDAE (Gray whales)	BALAENOPTERIDAE				PHYSETERIDAE
	Balaena mysticetus, Eubalaena spp. (glacialis and australis), Neobalaena marginata	Eschrichtius (or Rachianectes), glaucus (or gilbosus or robustus)	Balaenoptera (or Sibbaldus) musculus (Blue whale)	Megaptera nodosa (or novaeangliae) (Humpback whale)	Balaenoptera physalus (Fin whale)	Balaenoptera borealis (Sei whale) and Balaenoptera edeni (or brydei) (Bryde whale)	Physeter catodon (Sperm whale)
Protection of females and young	It is forbidden to hunt baby or nursing whales, also females accompanied by their young						
Rules concerning remuneration of gunners and crews	Work contracts for captains, crew and gunners of whaling and factory ships must contain clauses linking the amount of remuneration to be received to size and not to number of animals caught. As far as land personnel is concerned, their remuneration is linked to the result of their work. It is in every case forbidden to pay any remuneration to captains, gunners or crew of whalers based on number of units caught.						
Rules concerning processing and treatment	Every whale caught must be placed at disposal of processing station within 40 hours of its death. All whales caught must be handed over and must be processed completely, including internal organs, with the exception of the "fin". Complete treatment of whale skeletons which have been found abandoned will not be necessary.						
Areas closed to pelagic whaling	Prohibition of pelagic whaling in the maritime zone under the jurisdiction or sovereignty of the contracting states.						
Quotas for whaling from land stations			The permanent commission may establish catch quotas.				
Permits for whaling from land stations	Prohibition of taking and processing whales from or on a land station except by an undertaking thereunto authorized by the government concerned pursuant to the regulations governing whaling in the waters of the South Pacific. A new land station must be established only in a place at least 250 miles from the nearest land station. The number of whale catchers operating from each land station must not exceed 5.						
Complete prohibition of hunting and processing	Yes – Except for consumption by local people						
Minimum sizes			21.3 m	10.60 m	16.80 m	12.20 m	10.70 m
Minimum sizes if flesh is destined as foodstuff for human beings or animals	10.70 m		19.80 m	9.10 m	15.20 m	10.70 m	

It should be noted that the complete prohibition of pelagic whaling[80] has been reinforced in 1970 by the Permanent Commission which requested the General Secretary to suggest to Governments that they adopt rules forbiding the operations of factory ships.[81]

From its 3rd meeting the Permanent Commission has always considered that, because of the lack of scientific information, it has not been possible to establish catch quotas for the hunting of baleen whales from land stations.[82]

The Permanent Commission is not empowered to establish catch quotas for the hunting of sperm whales from land stations.[83] Before the prohibition of pelagic hunting of sperm whales it had granted only one permit for such hunting operation (to a Peruvian company).[84]

VII. ENFORCEMENT

The authorities of the Contracting States are responsible for the control of whaling and for the enforcement of the provisions of the regulations.[85]

Supervision and control are exercised by each country exclusively in the waters under its jurisdiction. A ship or an aircraft of a Contracting State may enter the maritime zone of another Contracting State only if its co-operation has been expressly requested.[86]

80/ Established by Article 10 of the 1952 Regulation Governing Whaling (for the baleen whales) and by a resolution of the Administrative Commission approved by the Permanent Commission at its 6th Meeting (for the sperm whale)

81/ XIth Meeting, Agreement XII

82/ IIIrd Meeting, Resolution VIII
IVth Meeting, Resolution VI
Vth Meeting, Resolution II
VIth Meeting, Resolution I etc....

83/ In Chile from 1953-1966 sperm whales represented 79% of the total catch of whales. In Peru from 1953-1967 sperm whales represented 96% of the total catch.

84/ IVth Meeting, Resolution VIII.

85/ Article 2 of the regulations governing whaling.

86/ Article 2 of the Agreement relating to measures of supervision and control in the maritime zone of the Signatory States.

An Agreement signed in 1954 provided for the establishment, in each State, of special courts to try cases involving offences against the regulations adopted by the Conferences. These courts were to have placed at the disposal of the Permanent Commission the entire cash proceeds of the fines recovered at seizures. The Permanent Commission, for its part, was to have distributed these proceeds in equal shares among the Contracting States, subject to a deduction of 10% representing receipts to be applied towards its budget.87/

However, this Agreement was never implemented by the Contracting States. The IVth Conference requested the Permanent Commission to consider a new draft agreement on penalties.88/

At the XIth Meeting of the Permanent Commission no agreement was reached and it was decided to re-submit this matter for study by the respective Governments or national sections in order that they may exchange viewpoints, and propose a procedure to be followed in the future.89/

87/ Article 5 and 6 of the Agreement relating to penalties

88/ IVth Conference, Resolution I.

89/ XIth Meeting, Agreement 41.

5. INTERIM CONVENTION ON CONSERVATION OF NORTH PACIFIC FUR SEALS (1957)

I. GENERAL:

International management of the North Pacific Fur Seal stock began at the end of the 19th century[90] but the Interim Convention[91] was signed only on February 9th, 1957[92] and came into force on October 14th, 1957. It was amended by a Protocol signed on October 8th, 1965 and entered into force on April 10th, 1964. This protocol extended the term of the Convention for an additional six years. The Convention, as amended, was continued in force for a further period of six years by an exchange of notes effective from September 3rd, 1969.

The Convention established a Commission which is, inter alia, entrusted with the following functions:

- to formulate, co-ordinate and recommend research programmes,
- to recommend appropriate measures to the Parties on the basis of the findings obtained from the implementation of such co-ordinated research programmes including measures regarding the size, sex and age composition of the seasonal commercial kill of a herd;
- to determine from time to time the numbers of seals to be marked on the rookery islands, and the total number of seals which shall be taken at sea for research purposes, the times at which such seals shall be taken, and the areas in which they shall be taken, as well as the number to be taken by each Party;
- to make recommendations to the Parties on any matter which relates to the Fur Seal resources.[93]

II. MEMBERSHIP

The Convention has been signed and ratified by four States: Canada, Japan, USSR and U.S.A. It does not contain provision for possible adhesion by other States.

III AREA OF APPLICATION

Pursuant to its Preamble the Convention applies to the North Pacific Ocean in

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90/ 1143: Bering Sea Fur Seal Arbitration; 1911: Convention for the Preservation and Protection of Fur Seals.

91/ Hereafter referred to as the Convention.

92/ UNTS No. 4546, Vol.314, p.149

93/ Article V.(2) (3) (4)

in general. It applies therefore to the territorial seas and fishing zones but does not affect the position of the Parties in regard to the limits of these areas.[94/]

However, the prohibition of pelagic sealing is provided for only in the part of this Ocean north of the 30th parallel of North Latitude including the Bering Sea and the Seas of Okhotsk and Japan.

IV. SPECIES COVERED

The Convention applies to the North Pacific Fur Seal (Callorhinus ursinus).

It should be noted that the scientific research programmes conducted by the Parties should determine what the relationship is between fur seals and other living marine resources, and whether fur seals have detrimental effects on other living marine resources substantially exploited by any of the parties and, if so, to what extent.[95/]

V. ADOPTION, AMENDMENTS AND ENTRY INTO FORCE OF CONSERVATION MEASURES

The most important conservation measures (the prohibition of pelagic sealing) are contained in the Convention itself which does not provide any particular procedure for its own amendment. The Commission may only amend the provisions of the Convention concerning the eventual suspension of commercial killing of seals and apportionment of skins by the USSR.[96/] Decisions and recommendations of the Commission are made by unanimous vote.[97/]

The Commission takes decisions on the number of seals to be marked on the rockery islands, and the total number of seals which shall be taken at sea for research purposes, the times at which such seals shall be taken, and the areas in which they shall be taken, as well as the number to be taken by each Party.[98/]

It makes simple recommendations on all other matters.

94/ Article I (3)

95/ Article II (1)

96/ Article IV (2) and (4)

97/ Except that with respect to any recommendation regarding the size, the sex and age composition of the seasonal commercial kill from a herd, only those Parties sharing in the seal skins from that herd may vote. (Article V (4).

98/ Article V (3).

The Convention does not contain provision concerning the entry into force of decisions and recommendations. It merely provides that the Parties shall enact and enforce such legislation as may be necessary to guarantee the observance of the Convention and to make effective its provisions.[99/]

VI. CONSERVATION MEASURES

The main rules governing the sealing operations in the Convention area are summarized in the chart overleaf . It can be seen that the result of these rules is to exclude Canada and Japan from commercial sealing operations. In compensation for this exclusion, the Convention provides that, the USA and the USSR are required to deliver to Canada and Japan 15% each of the gross take, in number and value,[100/] of seal skins taken commercially each season on land.

VII. ENFORCEMENT[101/]

The Convention entrusts any authorized official of any of the Parties to board and search, except in territorial waters, a vessel of any of the Parties if he has reasonable cause to believe that such vessel is offending against the prohibition of pelagic sealing.

When the official, after searching a vessel, continues to have reasonable cause to believe that the vessel is offending against the prohibition, he may seize such a vessel. In that case he must deliver the vessel promptly to the authorities of the Party having jurisdiction over her.

99/ Article X (1)

100/ Articles III and IX (1)

101/ See Article VI.

NORTH PACIFIC FUR SEAL COMMISSION (I) (After 15th meeting, 1972)

		U. S. A.	CANADA	U. S. S. R.	JAPAN
PELAGIC RESEARCH	Vessels	Only government-owned or government-chartered vessels operating under strict control of the authorities of the contracting parties			
		I stern trawler (400 T.)	I seiner (139 T.)	I freezing trawler (900 T.) I hunting schooner (780 T.)	I whale catcher (430 T.) I trawler (291 T.) I small harpoon boat (18 T.)
	Date and Areas.	March, April and May : off the state of Washington and the province of British Columbia between 46° and 49° North Latitudes.	From 1 December 1971 to February 29 1972 : along the coast of British Columbia and Washington between 46° and 49° North Latitudes.	- November 71 to February 72 : off the Commander Islands. - March-April 72 : Sea of Japan - May-June : waters east of Houshu and Hokkaido. - Summer : Kuril Islands area.	- from February 17 to April 10 off the coast of Japan. - July-August : Okhotsk Sea. - middle of May to middle of June off Sanriku.
	Number of Seals to be taken	About 400.	200.	Not more than 600.	Up to 1600.
LAND RESEARCH	Number of Seals to be taken			500 females on Robben Island. 500 females on Bering Island. plus a certain number of grey fur seals.	
COMMERCIAL KILLING ON LAND		- From 26 June through 29 July, all males seals 124,5 cm or less in body length will be taken. - Female seals will not be killed intentionally. - Forecasted kill of male seals : 38 000 on St Paul Island, 6 300 on St Georges Island.		- A lower length limit of 108 cm will be observed. - males aged 5 and 6 years will not be killed on the Commander Islands. Bulls will not be taken on Robben Island. - Planned kill : 5-6000 bachelors on Robben Island and 6 700 bachelors on the Commander Islands.	
COMMERCIAL PELAGIC KILLING		Prohibition of pelagic sealing (except for research) in the Pacific Ocean North of the 30th parallel of North latitude including the seas of Bering, Okhotsk, and Japan.			
TRADE IN FUR SEAL SKINS		Prohibition of importation and delivery into and of the traffic within the territories of the contracting parties of skins of fur seals taken in the above mentionned area in violation of the convention.			

(I) These provisions do not apply to Indians, Ainos, Aleuts, or Eskimos dwelling on the coast of the waters North of the 30th parallel of North latitude who carry on pelagic sealing in canoes not transported by or usedin connection with other vessels, and propelled entirely by oars, paddles or sails, and manned by not more than five persons each, in the way hitherto practised and without the use of fire arms ; provided that such hunters are not in the employment of other persons or under contract to deliver the skins to any person.

6. THE SCIENTIFIC COMMITTEE ON ANTARCTIC RESEARCH (1957)

I. GENERAL

Upon the recommendation of the last Antartic Conference before the International Geophysical Year (IGY) began, a Special (later retitled Scientific) Committee on Antartic Research (SCAR) was established in September 1957 by the International Council of Scientific Unions (ICSU) to ooordinate national programmes for the post-IGY period. The Committee held its organizing meeting at The Hague in February 1958 and now meets at yearly intervals.

At its fourth meeting it established a Permanent Working Group on Biology. This working group had itself set up several sub-committees of which one was called the Sub-Committee of Specialists on Seals. In 1972, this sub-committee, recognizing that its role was likely to enlarge, recommended that it should be reconstituted as a SCAR group of specialists. It was stressed that the group should meet as a group of independent scientists rather than as national representatives.[102] The SCAR approved this recommendation and established a working group consisting of not more than six members, including a nominee of FAO.[103] The terms of reference of the new working group are:

- to coordinate seal research undertaken by SCAR nations, particularly marking programmes;
- to scrutinize figures of the number of seals killed under permit;
- to continue the review of the status of seal stocks;
- to maintain liaison with biologists accompanying sealing expeditions and with international organizations concerned with marine mammals, such as IUCN and FAO[104]

II. MEMBERSHIP

In 1973, SCAR comprised twelve national committees representing the national scientific institutions of the twelve States participating in the Antartic Treaty Consultative Meetings (ATCM) and having overlapping interests in Antartic scientific activities.[105] Each of these States, as well as seven non-governmental organizations and one specialized agency of the U.N. (WMO) have premanent delegates to SCAR.

102/ Report of the Sub-Committee of Specialists on Seals of the Working Group on Biology, SCAR Bulletin No. 43, Polar Record, vol.16, No. 103, 1973, page 647

103/ Recommendation XII-GEN 15

104/ SCAR Bulletin No. 43, Polar Record, vol.16, No. 103, 1973, page 634

105/ (Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, .../...

III. AREA OF COMPETENCE

The SCAR region of interest has been defined as that within the Antartic convergence, though certain sub-antartic islands lying outside the convergence are taken as included within its suggested programmes.

IV. ACTIVITIES

1. With regard to the Antartic Treaty

Since its creation, SCAR has played the role of scientific adviser to the ATCM. In 1961, the representatives attending the first ATCM agreed :
(i) that the free exchange of information and views among scientists participating in SCAR and the recommendations concerning scientific programmes formulated by this body constitute a most valuable contribution to international scientific cooperation in Antartica;

(ii) that since these activities constitute the kind of activity contemplated in Article III of the Treaty, SCAR should be encouraged to continue this advisory work.[106/]

The recommendations prepared by SCAR are forwarded through national committees to the contracting parties participating in the ATCM. Up to the present, most of the recommendations formulated by SCAR have been adopted by the ATCM.

105/ cont'd

South Africa, U.K., U.S.A., U.S.S.R). See "The organization and membership of SCAR" Polar Record vol.16, May 1973, No. 104, page 769. Poland has asked to become a member, and at SCAR's 1959 meeting, the Polish request was accepted "as from the date of disembarkment of their wintering party on the Antartic Continent whenever that occurs". See N.J. Taubenfeld: "A treaty for Antartica", International conciliation No. 531, January 1961.

At SCAR's 1970 meeting a report was received from the Instituto Antartico Uruguano. SCAR's Group of Delegates agreed that Uruguay was not yet qualified to seek membership of SCAR because an active Antarctic scientific programme had not yet been established. See Polar Record, vol.15, January 1971, No. 97, page 625. At the twelfth meeting of SCAR it was agreed that any member nation who had not been active in the Antarctic for four years, or who had a scientific programme in the Antarctic but had not been active in SCAR for four years, may be asked whether it wishes to continue to be a member of SCAR, and if so, to state its future plans.

106/ Recommendation I-IV

2. With regard to the Convention for the Conservation of Antarctic Seals

This Convention invited SCAR:

(i) to assess information received, encourage exchange of scientific data and information among the Contracting Parties, recommend programmes for scientific research, recommend statistical and biological data to be collected by sealing expeditions within the Convention area, suggest amendments to the annex of the Convention;

(ii) to report, on the basis of the statistical, biological and other evidence available when the harvest of any species of seal in the Convention area is having a significantly harmful effect on the total stock of such species on the ecological system in any particular locality.

SCAR is also invited to notify the depositary (USA) which shall report to the Contracting Parties when SCAR estimates in any sealing season that the permissible catch limits for any species are likely to be exceeded, and in that case, to provide an estimate of the date upon which the permissible catch limit will be reached.[107] SCAR may, if necessary, seek the technical assistance of FAO in making its assessments.

Examining this procedure at its 1972 meeting, the Sub-Committee of Specialists on Seals noted that some of those tasks involved rapid action. It recommended therefore to be authorized when necessary to communicate directly through the SCAR Secretariat with the parties to the Convention.[108]

107/ Article 5(4) and (5) of the Convention for the Conservation of Antarctic Seals

108/ Report of the Sub-Committee of Specialists on Seals of the Working Group on Biology, SCAR Bulletin No. 43, Polar Record, vol.16, No. 103, 1973, page 648

7. AGREEMENT BETWEEN NORWAY AND USSR ON MEASURES FOR REGULATING THE CATCH AND CONSERVING STOCK OF SEALS IN THE NORTH EASTERN PART OF THE ATLANTIC OCEAN (1957)

I. GENERAL

For a long time, sealing in the North Atlantic waters was largely conducted by Norwegian ships. There was a balance between harvest and stock size until the fifties which was upset when the Soviet Union sent hunting expeditions to the grounds.[109/]

In order to establish international cooperation with a view to achieving the optimum productivity of stocks of seals in that area so that the size of these stocks may be increased and maintained at a level ensuring the maximum sustained yield, the Government of Norway and the USSR signed, on November 22nd, 1957 at Oslo, an Agreement on Measures for Regulating the Catch and Conserving the Stocks of Seals in the North Eastern Part of the Atlantic Ocean.[110/]

The Agreement has a preamble, 12 articles, and an annex. It set up a Permanent Commission entrusted:

(a) to submit proposals to the two Governments concerning the regulation of the hunting operations, and amendments or additions to the Annex;
(b) to submit proposals to the two Governments concerning scientific research.
(c) if it deemed necessary, to submit proposals to the two Governments concerning control over the implementation of the regulations governing hunting operations set forth in the Annex.[111/]

II. MEMBERSHIP

The Agreement has been signed and ratified by Norway and the USSR.

States interested in co-operating in the regulation of hunting operations and the

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109/ O. A. Mathisen and D. E. Bevan: Some international aspects of Soviet fisheries. Ohio State University Press. Columbus 1968, p.43

110/ UNTS, Vol. No. 309, No. 4476, p.269

111/ Article IV

conservation of stocks of the species of animals to which the Agreement applies may, with the consent of the Contracting Parties, become parties to the Agreement.[112]

III. SPECIES OF MARINE MAMMALS COVERED BY THE AGREEMENT

The initial Agreement applied to:

- Greenland (Harp) Seal (Phoca groenlandica).
- Hooded Seal (Cystophora cristata)
- Walrus Seal (Odobaenus rosmarus)

Under the proposal of the Commission the Agreement may be extended to apply to bearded seals (Erignatus barbatus) and Ringed Seals (Phoca hispida).[113]

In fact, conservation measures have subsequently been adopted for bearded seals.

IV. AREA OF APPLICATION

The Agreement applies to waters of the North Eastern part of the Atlantic Ocean east of Cape Farewell in which the nationals of the two countries hunt seals, namely, the Greenland and Norwegian seas, the Denmark Strait, the area of Jan Mayen Islands, and the Barents Sea.

The Annex to the Agreement defines four hunting areas:

- Jan Mayen hunting area (Vesterisen): the area of the shelf ice off the eastern coast of Greenland between 77° north latitude and a line drawn from the Cape Nord (Horn) in Iceland westward to a point 66°28' north latitude, and 30° west longitude, thence in a straight line to the middle of Storfjord in Greenland.
- Northern hunting area (Nordisen):the area of the shelf ice off the Northern part of the Greenland Sea, North of 77° with latitude bounded on the east by the 20th meridian east.
- Eastern hunting area (Østisen): the area of the shelf ice of the Barents Sea, east of the 20th meridian east.

112/ Article X

113/ Article I

- Denmark strait hunting area: the ice pack east of Greenland, south of the above-mentioned line drawn from Cap Nord (Horn) in Iceland to Storfjord in Greenland.

V. ADOPTION, AMENDMENT AND ENTRY INTO FORCE OF REGULATORY MEASURES

The Commission's proposals concerning scientific research, regulations governing hunting operations and control over their implementation, the sharing of expenditure on any research carried out in common and other joint expenditures, and the extension of the Agreement to other species are to be submitted to the two Governments for approval, and become binding if such approval is granted.

Regulations governing hunting operations and measures for the control of their implementation proposed by the Commission, once they have been approved, must be put into effect by the Contracting Parties not later than two months after they have become binding, unless the Contracting Parties agree otherwise.[114/]

VI. REGULATORY MEASURES

Regulatory measures are summarized in the following chart:[115/]

COMPLETE PROTECTION	SEALING SEASON	CATCH QUOTAS
Species: moulting hooded seal Area: Denmark Strait (only after 5 May)	Species: Harp and Hood Area: Jan Mayen Dates: 23 March to 5th May	Species: Hood seals Area: Jan Mayen Quota: 30,000
Species: Bearded seals Area: Eastern (excepting Ibard waters West of 37° East and North of 75° North	Species: Harp Area: Eastern (Barent Sea) Date: 23rd March-30th April	Species: Harp Seals (pups) Area: Jan Mayen Quota: 15,000
Species: Walrus Area: All		Species: Harp Seals Area: Eastern Quota: 14,000 (for Norwegian ships only)

. .../....

114/ Article VII
115/ In force for 1972

COMPLETE PROTECTION	SEALING SEASON	CATCH QUOTAS
Species: Harp (Mature females) Area: All		Species: Harp seals (pups) Area: White sea Quota: 29,000 (for resident Soviet coastal hunters only)
Soviet ships must abstain from hunting harp seal in the White Sea, and the Barents Sea.		

Notwithstanding these prohibitions each Contracting Party may issue to its nationals licences for the taking of seals:

(a) for scientific research

(b) for the local indigenous inhabitants and for expeditions provided that the raw materials are used for food, animal feeds and other local domestic purposes.

States must inform the Commission of the issuance of such licences.

In addition, the Annex provides measures concerning sealing methods:

- the taking of seals by the use of poisonous substances is prohibited;
- means and methods of taking or hunting seals which involve substantial losses of wounded animals are also prohibited;
- animals found in the waters between ice floes or in the open seas may be hunted from vessels only by means of harpoon guns;
- in taking marine mammals on coastal rockeries, the pollution of the rockeries with the carcases and the remains of slaughtered animals, and the lighting of bonfires in the rockeries are prohibited.

VII. ENFORCEMENT

Each party has undertaken to carry out such measures as may be necessary to ensure the observance of the Agreement.

Although the question of the control over the implementation of the regulations set forth in the Annex is within the competence of the Commission, the latter has not established any international means of control; it has only agreed upon a system for mutual reports of infractions.

8. CONVENTION CONCERNING FISHING IN THE BLACK SEA (1959)

I. GENERAL[116]

By a Convention signed in Varna (Bulgaria) on July 7th, 1959,[117] a Mixed Commission for Black Sea Fisheries was established. The Convention came into force for a period of five years and thereafter for successive periods of five years for those Contracting Parties who have not stated their intention to terminate it.[118]

In concluding the Convention the Contracting Parties agreed to cooperate and assist one another incarrying out national fishing in the Black Sea, in improving fishing techniques, and in carrying out research in the field of ichthyology and hydrobiology for the purpose of maintaining and augmenting the stocks of fish in the Black Sea with a view to increasing the yield.[119]

The Mixed Commission is, inter alia, entrusted:
- to work out agreed measures to regulate fishing, with a view to the conservation and augmentation of the stock of fish in the Black Sea, and to develop industrial fishing techniques;
- to introduce amendments to Article 5 of the Convention concerning the species and dimensions of fish caught in the Black Sea.[120]

II. MEMBERSHIP

The signatories of the Convention are Bulgaria, Romania, and the USSR. The Convention provides that other Black Sea States may accede to it. In this connection, it may be noted that in 1963 Turkey was invited by the President of the Commission to acceed to the Convention but no reply has been received from the Turkish government.

116/ See "Establishment, structure, functions, and activities of the mixed Commission for Black Sea Fisheries", GFCM/9/67/15 E

117/ UNTS, vol.377, No. 5402, page 218

118/ Article 13

119/ Article 1

120/ Article 9

III. AREA OF APPLICATION

The area to which the Convention applies is the Black Sea. No mention is made of contiguous seas or waters (Sea of Azov). The Convention specifically provides that its provisions do not affect the status of the territorial and inland waters of the Contracting Parties.[121]

IV. SPECIES OF MARINE MAMMALS CONVERED BY THE CONVENTION

The Convention employs the words "stocks of fish", "fishing". In the strictly biological sense this wording seems to exclude marine mammals. In practice the Commission has also turned its attention to marine mammals (particularly to dolphins) but it has never formally adopted any recommendations or taken any decisions concerning marine mammals.

V. ADOPTION, AMENDMENTS AND ENTRY INTO FORCE OF REGULATORY MEASURES

The Commission takes decisions on the species and dimensions of fish that may be caught in the Black Sea. On all other matters it confines itself to making recommendations.

The adoption of recommendations and decisions requires the favourable vote of the representatives of all the Contracting Parties.

However, the recommendations are submitted to the Contracting Parties and take effect only if none of the Parties raise objection within four months.[122]

VI. CONSERVATION MEASURES CONCERNING MARINE MAMMALS

At the seventh session (1966) the Parties discussed the information they had each provided on the extremely unsatisfactory state of dolphin stocks. The Soviet Union stated that with effect from April 1st, 1966, it had prohibited the taking of dolphins for a period of ten years. The Commission also took note of statements by Bulgaria and Romania that they would impose a prohibition in 1966 on the catching of dolphins in the Black Sea for a ten year period, permitting catching only for

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121/ Article I
122/ Article 10

scientific purposes. The Commission recommended to Bulgaria, as depositary of the Convention, that it should address an invitation to Turkey to support the decision of the member countries of the Commission prohibiting the taking of dolphins.

9. ANTARCTIC TREATY

I. GENERAL

The aim of the Antartic Treaty, signed in Washington on December 1st, 1959, and entered into force on June 23rd, 1961,[123] is to establish a firm foundation for the continuation and development of such international cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year (IGY) and to ensure the use of Antarctica for peaceful purposes only.[124]

II. MEMBERSHIP

The Treaty was signed and ratified by the twelve countries represented at the 1959 Washington Conference: Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, USSR, U.K., and the U.S.A. It is open for accession by any State which is a member of the U.N. or by any other State which may be invited to accede with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under the Treaty (i.e., all the original signatories and such States acceding to the Treaty which demonstrate their interest in Antarctica by conducting substantial scientific research there).[125]

So far, five States had acceded to the Treaty (Czechoslovakia, Denmark, Netherlands, Poland, Romania) but none of these attend the consultative meetings.

III. AREA OF APPLICATION

The provisions of the Treaty apply to the area South of 60° South Latitude including the ice shelves.[126]

123/ U.S. Department of State Bulletin, Vol. 41 (1959), p.911.

124/ See R. J. Dupuy: "Le traite sur l'Antartique," Annuaire Francais de droit international 1960, p.111-132.

125/ Articles XIII and XI

126/ It should be mentioned that certain States have extended the implementation of the recommendations formulated by the Antarctic Treaty Consultative Meetings (ATCM) to territories situated outside the Treaty area. South Africa's internal legislation extended the provisions of recommendation IV-VIII (Conservation of Antarctic flora and fauna) to Prince Edward and Marion Islands. See M.W.Holdgate: Conservation in the Antarctic in "Antarctic Ecology", Vol.2, Academic Press, London 1970, p.940.

Nothing in the Treaty prejudices or in any way affects the rights, or the exercise of the rights of any State under international law with regard to the High Seas within the area.[127] This disclaimer has important repercussions with regard to conservation measures.

IV. SPECIES OF MARINE MAMMALS COVERED

The Treaty refers generally to "the living resources in Antartica."[128] However, when at the third ATCM the representatives of the Contracting Parties agreed to recommend to their governments measures for the conservation of Antarctic fauna and flora, they decided that it would apply to "any member, at any stage of its life cycle, of any species ... belonging to the class mammalia indigenous to the Antarctic or occuring there through natural agencies of dispersal, excepting whales"[129].

V. ADOPTION, AMENDMENT AND ENTRY INTO FORCE OF CONSERVATION MEASURES

The meetings provided for in the Treaty are normally held once every two years for the purpose of exchanging information, consulting on matters of common interest pertaining to Antarctica and formulating and recommending measures regarding, inter alia, the preservation and conservation of living resources in Antarctica.

The measures so recommended become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meeting held to consider those measures.[130] This requirement of unanimity raises difficulties with regard to the implementation of the conservation measures proposed.

The chart overleaf shows the measure of approval by the governments of the recommendations formulated at the seven ATCM's held so far.[131]

VI. CONSERVATION MEASURES CONCERNING MARINE MAMMALS

At the first ATCM held in 1961, the representatives of the Contracting States recognized the urgent need for measures to conserve the living resources of the Treaty

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127/ Article VI. These rights, as itemized in Article 2 of the 1958 Geneva Convention on the High Seas include the right to fish. That right almost certainly includes the right of "seal fishing" and probably includes the right to take other mammals at sea. See David Anderson, "The Conservation of Wildlife under the Antarctic Treaty" The Polar Record, Vol.14, No.88, 1968, p.25

128/ Article IX (f)

129/ Article II(a) of the Agreed Measures for the Conservation of Antarctic Flora and Fauna.

130/ Article IX (4)

131/ See Report of the 1st meeting in Polar Record, Vol.11, No.70, 1962, p.73-78
2nd " " " " " 11, No.73, 1963, p.465-469
3rd " " " " " 12, No.79, 1965, p.453-472
4th " " " " " 13, No.86, 1967, p.629-658
5th " " " " " 14, No.92, 1969, p.663-686
6th " " " " " 15, No.98, 1971, p.729-760
7th " " " " " 16, No.103, 1973, p.595-609

APPROVAL OF THE ANTARTIC TREATY CONSULTATIVE MEETING'S RECOMMENDATIONS

	First Meeting (1961) 16 Recommendations adopted.	Second Meeting (1962) 10 Recommendations adopted.	Third Meeting (1964) 11 Recommendations adopted.	Fourth Meeting (1966) 28 Recommendations adopted.	Fifth Meeting (1968) 9 Recommendations adopted.	Sixth Meeting (1970) 15 Recommendations adopted.	Seventh Meeting (1972) 9 Recommendations adopted.
	Approved	Approved	Approved	Approved	Approved	Approved	Approved
ARGENTINA	All	All	All	All	All	All	
AUSTRALIA	All	All	All except VIII	All except I-19	All except 5,6	All except 8, 9, 10.	
BELGIUM	All	All	All except VIII	All except I-19	All except 5,6	All except 8, 10.	All except 5.
CHILE	All	All	All	All	All	All	All except 4, 6, 9.
FRANCE	All	All	All	All	All	All	All
JAPAN	All	All	All except VIII	All except I-19	All except 5,6	All except 8, 9, 10.	
NEW ZEALAND	All	All	All	All	All	All	
NORWAY	All	All	All	All	All	All	
SOUTH AFRICA	All	All	All	All	All	All	All
USSR	All	All	All	All	All	All	
UK	All	All	All	All except 12	All	All except 8, 10°°	
USA	All	All	All except VII, VIII.	All except I-19	All except 5, 6°	All except 10°°°	All except 5°°°°

° 5 and 6 accepted as interim guidelines.
°° 8 and 10 accepted as interim guidelines.
°°° 10 accepted as interim guideline.
°°°° 5 accepted as interim guideline.

area and to protect them from uncontrolled destruction or interference by man. They recommended to their governments that:

- they consult on the form in which it would be most suitable to establish in due course internationally agreed measures for the preservation and conservation of the living resources in the Antarctic;
- as an interim measure they issue general rules of conduct on the line of the 1960 recommendations of the scientific committee on Antarctic research (SCAR).[132]

Briefly, these rules were designed to:

- limit the killing of indigenous animals (fur seals being singled out for special protection);
- limit the introduction of alien forms of flora and fauna;
- prevent harm being done to wildlife from the conduct of stations and operations.

At the third ATCM, the Contracting Parties adopted "Agreed Measures for the Conservation of Antarctic Flora and Fauna" and, at the fourth ATCM they adopted some "Interim Guide Lines for the Voluntary Regulation of Antarctic Pelagic Sealing".

1. The agreed measures for the conservation of the Antarctic flora and fauna

It was pertinently stated[133] that the agreed measures constitute a somewhat unusual type of international instrument. They are appended to recommendation III-VIII of the third ATCM but as a self-contained text. They have a preamble, 14 articles and 4 annexes. They contain provisions for their entry into force and their revision. In fact, they have many of the characteristics of an international agreement or Treaty. They shall become effective after approval by all governments whose representatives were entitled to participate in the third ATCM. As of 1973, four governments[134] had not yet approved recommendation III-VIII. However, the agreed measures are considered as interim guidelines by all the Contracting Parties.[135]

The main provisions of the agreed measures are contained in Articles VI to IX.

132/ Recommendation I-VIII

133/ See Anderson, Op.Cit.

134/ Australia, Belgium, Japan, U.S.A.

135/ In conformity with recommendation III-IX, effective for all Contracting Parties from July 27th, 1966.

(a) Permits and specially protected species

Article VI prohibits the killing, wounding, capturing or molesting of any native mammals except with a permit and provides that permits shall only be issued for providing food for men and dogs in the Treaty area in limited quantities and for providing specimens for study or zoological gardens etc. In addition, two scientific criteria must be respected: (1) the possibility of the natural reproduction of the stock and, (2) the maintaining of the balance of the natural ecological system.

Article VI also contains provisions with regard to the specially protected species of native mammals for which permits may be issued only for a compelling scientific purpose and if the action taken will not jeopardize the natural ecological system and the survival of that species.

The fourth ATCM recommended that all species of Fur Seal (Arctocephalus spp.) and Ross Seals (Ommatophoca rossi) should be considered as specially protected species.[136]

(b) Harmful interference

Article VII concerns harmful interference with the living resources of native mammals. The general obligation to take "appropriate measures to minimize harmful interference" is supplemented by a list of specific examples.

(c) Specially protected areas

Article VIII provides for the creation of areas of outstanding scientific interest designated as specially protected areas. As a result of the 4th, 5th and 6th ATCM, sixteen specially protected areas were created. The recommendations creating three of these areas mention expressly that the outstanding scientific interest taken into consideration is the presence of colonies of seals.[137]

In these areas, permits have effect only if (1) they are issued for a compelling scientific purpose which cannot be served elsewhere and (2) the action permitted thereunder will not jeopardize the natural ecological system. The 6th ATCM strengthened the prohibitions and measures of protection relating to these areas by recommending to prohibit the entry of man into a specially protected area (except with a permit).[138]

At its 12th meeting, the SCAR expressed the opinion that the specially protected areas were not fully representative of the major Antarctic land and freshwater ecological systems. Noting this opinion, the 7th ATCM invited SCAR to review the existing specially protected areas and to make recommendations about (a) the desirability of retaining each area; (b) the desirability of re-defining the limits of each area retained; (c) creating such additional areas as may be considered desirable.[139]

136/ Recommendations IV-16 and IV-17

137/ Area 10: Byers Peninsula, Livingston Island, South Shetland Islands, Lat 62°38'S. Long. 61° 05'W; Area 11: Cape Shirreff, Livingston Island, South Shetland Islands, Lat. 62°28'S, Long. 60°48'W; Area 15: Southern Powell Island and adjacent islands, South Orkney Island, Lat. 60°45'S, Long. 45°02'W.

138/ Recommendation VI-8

139/ Recommendation VII-2

(d) Introduction of non-indigenous species

Article IX[140] is designed to prevent the introduction into the Antarctic of species which might upset the ecological system. A permit system governs the introduction of non-indigenous species. Practically only sledge dogs, domestic animals and plants, including viruses, bacteria, yeasts and fungi may not be introduced with a permit. Importation of other animals and plants is fully prohibited.

2. The interim guide-lines for the voluntary regulation of Antartic pelagic sealing

The provisions of Article VI of the Treaty preserving the right, or the exercise of the right of any State under international law with regard to the high seas within the Treaty Area limits the geographical coverage of the conservation measures which can be recommended. It would appear that the agreed measures apply only to the land areas and to the margin of the ice-shelves.[141]

In 1966, the representatives of the 4th ATCM recognized that the seal stock south of the 60° South Latitude required a binding international agreement for its effective regulation.[142] At the same time they recommended that each government take account of the interim guide-lines for the voluntary regulation of Antarctic pelagic sealing.[143]

The 1966 version of interim guide-lines laid down a number of general principles but the detailed annexes required to give effect to the principles were not formulated. The 4th ATCM requested SCAR to report on the matters that it considered should be listed in the annexes.[144]

At the following ATCM in 1968, SCAR proposed a number of amendments to the original version of the interim guide-lines, as well as 5 annexes.[145] The representatives recommended to their governments that, until a decision is taken on the adoption of an international convention, they should voluntarily take account of the proposals of SCAR

140/ As amended by recommendation VII-5

141/ See Holdgate Op.Cit. (pp.930-31 and 952) who considers that the Agreed measures do not apply to the areas of floating ice and to the high seas. It should also be noted that the representatives of the Contracting Parties recognized at the 6th ATCM that the conservation of seals in the sea does not fall within the scope of the Treaty. (See Report of the 6th ATCM, para.10.)

142/ Recommendation IV-21

143/ Hereinafter referred to as "the interim guide-lines".

144/ Recommendation IV-22.

145/ See Polar Record, Vol.14, No.92, 1969, p.670

on the modifications of the interim guide-lines.[146] This recommendation was accepted by all States participating in the ATCM and became effective as from the 1969-70 sealing season.

Its main clauses are:

- the establishment of catch limits for taking Crabeater Seals (Lobodon carcinophagus) (200,000 individuals in any one year), Leopard Seals (Hydrurga leptonix) (15,000) and Weddell Seals (Leptonychotes weddelli) (10,000);
- prohibition of killing or taking a seal at sea;
- prohibition of killing or taking Ross Seals (Ommatophoca rossi), Elephant Seals (Mirounga Leonina) and Fur Seals (Arctocephalus spp.) except with a permit;
- seasonal prohibition (between 1st September and 15th December) for killing or taking Weddell Seals (Leptonychotes weddelli) one year old or older;
- division of the Treaty area into six sealing zones, each zone having to be closed in turn for one season;[147]
- establishment of seal reserves in areas which form a seal breeding area or are the site of a long term scientific research on seals. In these reserves, seals should not be killed or taken except with a permit;
- permits should be issued only to provide food for men and dogs in limited quantities and to provide specimens for scientific studies etc.

At present, pelagic sealing is only carried out on a very limited basis but it could be developed in the near future. It has been calculated that the skins of the seals which may be hunted under the interim guide-lines represent a value of about two million US dollars.[148]

As soon as all States participating in the ATCM have ratified the 1972 Convention for the Conservation of Antarctic Seals the provisions of the interim guide-lines will be superseded.

146/ Recommendation V-7.

147/ Zone 1: between 60° and 120° West Longitude; Zone 2: between 0° and 60° West Longitude together with that part of the Weddell Sea lying westwards of 60° West Longitude; Zone 3: Between 0° and 70° East Longitude; Zone 4: between 70° and 130° East Longitude; Zone 5: between 130° East Longitude and 170° West Longitude; Zone 6: between 120° and 170° West Longitude; the first zone to be closed being Zone 1, and thereafter Zone 2, etc.

148/ Neal Potter: "The Antarctic: any economic future?" in Science and Political Affairs, December 1970, Vol.XXVI, No.10, p.94-95.

10. THE SPECIAL COMMITTEE FOR THE INTERNATIONAL BIOLOGICAL PROGRAMME

1. On December 29th, 1963, the 10th general assembly of the International Council of Scientific Unions (ICSU) established a Special Committee for the International Biological Programme (SCIBP). The purpose of this committee was to initiate and coordinate, on a world-wide basis research into the biological basis of productivity and human welfare.

2. This Programme was initially scheduled for a period of 7 years divided into two phases:

- Phase 1 (1964-1967) to establish methodological approaches;
- Phase 2 (1967-1972) to coordinate studies and research projects of international significance.

At its general assembly in 1970, ICSU authorized the extention of IBP for a further two years (from July 1972). This additional period has been designated Phase 3, and is to be used to effect a synthesis of results and transfer the functions of the Special Committee to other international bodies.[149/]

3. The SCIBP consists of 31 members from 21 countries as follows: Australia, Belgium, Brazil, Canada, Chile, Czechoslovakia, Denmark, France, India, Israel, Italy, Japan, Nigeria, New Zealand, Poland, South Africa, Sweden, Switzerland, U.K., U.S.A., U.S.S.R.

4. The Programme was organized under 7 sections including a section "Productivity of marine communities"(PM). The programme of section P.M. was divided into 4 main themes, (A,B,C,D). Theme D was entitled "World Wide studies of selected organisms." Four groups of organisms have been selected, one of these being the marine mammals. The studies carried out so far have dealt principally with seals, small cetaceans not covered by the International Whaling Commission, sirenians and sea otters.[150/] The 4th general assembly of IBP retitled Theme D as "Sea Mammals."[151/]

5. The action of the SCIBP is exclusively scientific and has not been concerned with the adoption of international regulations.

149/ IBP News No. 23, December 1972, p.9
150/ " " No.18, March 1969, p.1
151/ " " No. 23, December 1972, p.10

11. CONVENTION FOR THE INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA (1964)

1. The International Council for the Exploration of the Sea was established in Copenhagen in 1902 but it was for a long time a somewhat informally organized body. To give it a more formal legal basis, an International Convention was signed on September 12th, 1964, which entered into force on July 22nd, 1968.[152/]

The functions of the Council are:

- to promote research for the study of the sea, particularly with respect to the living resources;
- to draw up research programmes;
- to publish the results of such research.

2. The present members of the Council are: Belgium, Canada, Denmark, Germany (Rep.fed.of), Finland, France, Iceland, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Spain, Sweden, U.K., U.S.S.R.

3. The area of competence of the Council is the Atlantic Ocean and its adjacent seas, but particularly the North Atlantic.

4. The Council established several standing committees including a Marine Mammals Committee, the functions of which are:

- to study the data concerning marine mammals (particularly seals and whales), living in the Convention area and the status of the stocks of such species; and
- to coordinate research undertaken in these matters.

5. Regarding whales, the work of the Marine Mammals Committee concerns principally the assessment of the populations of the various species. Regarding seals it is concerned not only with the assessment of the stocks but also the evaluation of the accumulation of mercury in seals. It is expected that these studies may help to throw light on the effect that marine pollution may have on humans.[153/]

152/ ILM 1968, p.302; UNTS No. 9344.

153/ Conseil international pour l'exploration de la mer, Procès Verbal de la Réunion, 61st Statutory Meeting, Lisbon, 1 - 10 October 1973, January, 1974, p.103.

12. AGREEMENT ON FISHERIES BETWEEN JAPAN AND THE REPUBLIC OF KOREA (1965)

I. This Agreement was signed in Tokyo on June 22nd, 1965, and came into force on December 18th, 1945. It sets up joint control zones situated off the coasts of the two countries and provides for the establishment of a Japan/Republic of Korea Joint Fisheries Commission. An Annex, which is appended to the Agreement, lays down some provisional regulation measures for fisheries which apply within the joint control zones.

2. The Commission makes recommendations to the Parties concerning scientific research for the purpose of studying the fishery resources in the sea areas of mutual interest and concerning control measures within the joint control zones. It may also review, when necessary, matters concerning the provisional regulation measures and recommend to the Contracting Parties with respect to measures, including the revision of the provisional regulation measures, to be taken on the basis of the result of such review.

3. The provisional regulation measures for fisheries do not refer explicably to the hunting of marine mammals but limit the number of vessels authorized to operate in the joint control zones.

4. By a Note Verbale of November 6, 1973, the Government of Korea informed FAO that she has been implementing a whaling licence system to conserve whales in the joint control zones and that, according to the 1965 Agreement, the Korean Government has been maintaining the units of whaling licences as it was on the date of the Agreement.

13. THE AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES (1968)

I. GENERAL

In 1964 an ECA/UNESCO International Conference on the Organization of Research and Training in Africa in Relation to the Study, Conservation and Utilization of Natural Resources, recommended that the Organization of African Unity (OAU) be invited to entrust to the IUCN, assisted by FAO and UNESCO, the preparation of a draft Convention on the Conservation of Nature and Natural Resources to supplement and replace the 1933 Convention on the Fauna and Flora in Africa.

At the 5th Ordinary Session of the Assembly of Heads of States and Governments of OAU (Algiers, 1968) an African Convention on the Conservation of Nature and Natural Resources was adopted and signed.[154/]

On October 9th, 1969, the Convention came into force.[155/] It has a Preamble, 25 articles, and an annex listing the protected species which are divided into two classes. It does not establish any specific body but entrusts an appropriate organ of the OAU with certain functions.

II. MEMBERSHIP

The Convention is open to accession by any independent and sovereign African State. It should be noted that, amongst those States, thirteen have no seaboard. (Botswana, Burundi, Central African Republic, Chad, Lesotho, Malawi, Mali, Niger, Rwanda, Swaziland, Uganda, Upper Volta, Zambia).

III. AREA OF APPLICATION OF THE CONVENTION

The Convention does not contain any provision specifying expressly the area to which it applies. But it is evident that it should apply to the African continent only including Madagascar and other island States which may become members of OAU.

154/ The Convention was published by the General Secretariat of the OAU.

155/ After the elapse of 30 days from the day the Administrative Secretary-General of the OAU had received instruments of ratification from the fourth member State as stipulated in Article XXI of the Convention.

It may be assumed that the Convention applies to the islands and waters over which Contracting States have jurisdiction. In fact, the Convention provides that "the contracting states shall manage aquatic environments .... in coastal waters."[156]

IV. SPECIES OF MARINE MAMMALS COVERED BY THE CONVENTION

Several species of marine mammals are listed in the annex, namely:

- the Mediterranean monk seal (Monachus monachus)
- the West African manatee (Trichechus senegalensis)
- all otters of the sub-family Lutrinae
- the dugong (Dugong dugon)

V. ADOPTION, AMENDMENT AND ENTRY INTO FORCE OF REGULATORY MEASURES

Most regulations are contained in the Convention itself.

The adoption of additional regulations would require a revision of the Convention.[157] Meetings of Contracting States to revise the Convention are to be organized by an appropriate organ of the OAU. Requests for such meetings must be made by at least three of the Contracting States, and be approved by two-thirds of these States.

However, a simple procedure is provided for as regards amendments to the Annex to the Convention. That Annex contains the list of protected species. The appropriate organ of the OAU may revise or add to the Annex, and such revisions or additions coming into force three months after approval by such organ.[158]

VI. CONSERVATION MEASURES

1. Measures concerning methods of hunting, capture and fishing

Under the Convention, the Contracting States have to adopt adequate legislation under which:[159]

(a) the following methods are to be prohibited:

- any method liable to cause a mass destruction of wild animals;

156/ Article VII

157/ In accordance with the procedure laid down in Articles XVI(3) and XXIV.

158/ Article XXIV(3)

159/ Article XII

- the use of drugs, poisons, poisoned weapons or poisoned baits;
- the use of explosives.

(b) the following methods are to be particularly prohibited:

- the use of mechanically propelled vehicles;
- the use of fire;
- the use of fire-arms capable of firing more than one round at each pull of the trigger;
- hunting or capture at night;
- the use of missiles containing detonators.

(c) the following methods are as far as possible to be prohibited:

- the use of nets and stockades
- the use of concealed traps, pits, snares, set gun traps, deadfalls, or hunting from a blind or hide.

2. Protected species

Protected species are listed in class A or B of the Annex to the Convention according to the degree of protection to be accorded to them.

Species of Class A (Mediterranean monk seal (Monachus monachus), dugong (Dugong dugon), West African manatee (Trichechus senegalensis)) are to be totally protected throughout the entire territory of the Contracting States. The hunting, killing, capture or collection of specimens is permitted only on the authorization in each case of the highest competent authority, and only if required in the national interest or for scientific purposes.

Species of Class B (all otters of the sub-family Lutrinae) are to be totally protected but may be killed, hunted, captured or collected under special authorization.

14. CONVENTION ON THE CONSERVATION OF THE LIVING RESOURCES OF THE SOUTHEAST ATLANTIC (1969)

1. Nine States (Bulgaria, Belgium, France, Japan, Poland, Portugal, South Africa, Spain and USSR) are party to this Convention[160] which applies to the Southeast Atlantic Ocean between the parallel 6° South and the parallel 50° South and between the meridian 20° West and the meridian 40° East.[161] The Convention was made in Rome on October 23, 1969 and entered into force on October 24, 1971).

2. The Convention applies to all fish and other living resources with the exception of any such resources as may be excluded pursuant to arrangements or agreements entered into by the Commission created by the Convention.[162] During the elaboration of the Convention certain States proposed to exclude whales but these proposals were finally discarded.

3. At its first meeting (Rome, 1972), the Commission agreed that it would be highly desirable to establish close working relations with the IWC in order to avoid duplication of efforts regarding studies of whales.[163]

160/ The text of the Convention was published by FAO in 1970.

161/ Article I of the Convention defines this area with more detailed reference.

162/ Article III.

163/ Report of the first session, ICSEAF, Rome, 24-28 April 1972. FAO Fisheries Report No. 124, p.13.

15. AGREEMENT BETWEEN CANADA AND NORWAY ON SEALING AND THE CONSERVATION OF THE SEAL STOCK IN THE NORTH WEST ATLANTIC (1971)

I. GENERAL

The difficulties raised for international sealing management by the exclusion of territorial waters from the area of competence of the International Commission for the North West Atlantic Fisheries has been mentioned in an earlier part of this study.[164/] At the time of the signature of the Convention establishing this Commission the breadth of Canadian territorial sea was three miles.

In 1964, Canada established, beyond its territorial sea, a 9-mile fishing zone.[165/] By a series of measures taken in 1967 and 1969 Canada extended the outer limit of its territorial waters by establishing new base-lines which closed a number of bays in the Newfoundland area. In 1970, the Canadian territorial sea was extended to twelve mile limit, and in 1971 new fishing zones (closing inter alia the St. Lawrence Gulf) were established. Upon tacit agreement with the Canadian authorities Norwegian sealers had ceased their activities in the St. Lawrence Gulf since 1964 but they continued to carry out important sealing operations in the Newfoundland area.

The two Governments entered into negotiations and an Agreement on Sealing and the Conservation of the Seal Stocks in the Northwest Atlantic was signed in Ottawa on July 15th, 1971.

This Agreement establishes a Commission which is entrusted with the following functions:

(a) on the basis of scientific and practical research to submit proposals to the Contracting Parties with regard to, inter alia, sealing and the conservation of the seal stocks, national quotas, opening and closing dates, humane hunting methods, and the prevention of cruelty or suffering to the animals;

(b) to submit proposals to the Contracting Parties with regard to the establishment of inspection and control procedures required to ensure the implementation of the provisions of this Agreement;

164/ See Section 3

165/ Loi sur la mer territoriale et les zones de pêche du Canada. Lois du Canada, Session 1964-1965, 13 Elis.II, chap.22

(c) to submit proposals to the Contracting Parties concerning scientific research to be undertaken jointly or separately with respect to sealing, and the conservation of the seal stocks, or concerning the co-ordination of such research.[166]

The Agreement entered into force on the date of the exchange of the instruments of ratification.[167]

II. AREA OF APPLICATION

This Agreement applies to an area including waters of the Northwest Atlantic, North of 45°North latitude and West of 45° West longitude.[168] The proposals submitted by the Commission will therefore apply to the territorial seas. Naturally this provision should not be interpreted in itself as authorizing Norwegian vessels to hunt seals in Canadian territorial seas.

In view of the fact that the movements of the seal herds are governed by unpredictable weather conditions and consequently that, in certain years, the ice on which the seals are concentrated shifts inside the Canadian territorial sea, Norwegian vessels engaged in sealing operations are allowed to take seals:

(a) within the outer nine miles of the territorial sea of Canada between 48°00' North latitude and 55°20' North latitude; and

(b) up to but not closer than three miles from the nearest land in all the waters of Notre Dame Bay and of the Strait of Belle Isle northeast of a straight line drawn from the lighthouse at Amour Point to the lighthouse on Flowers Island in Flowers Cove, Newfoundland.

Norwegian sealing is not otherwise allowed in the Gulf of St. Lawrence.[169]

III. MEMBERSHIP

The Agreement was signed by Canada and Norway.

166/ Article IV
167/ Article XIII
168/ Article I
169/ Article XII

Other States interested in the conservation of the seals to which the Agreement applies may be invited by Canada and Norway to accede to Article I to X.[170]

Therefore,

- the sending of invitations to other States to accede will remain within the exclusive competence of the original signatories;
- only Norway will be authorized to hunt seals in certain areas of the Canadian waters.

IV. SPECIES COVERED BY THE AGREEMENT

The Agreement applies to harp seals (Phoca groenlandica). On a proposal by the Commission it may be extended to hooded seals (Cystophora cristata), bearded seals (Erignatus barbatus) and walruses (Odobenus rosmarus).[171]

It may be noted that these two last species are not covered by the regulations of the International Commission for the Northwest Atlantic Fisheries.

V. ADOPTION, AMENDMENTS AND ENTRY INTO FORCE OF CONSERVATION MEASURES

Decisions of the Commission are taken by unanimous vote.[172]

The proposals of the Commission concerning conservation measures and other measures to regulate sealing activities are submitted to the Contracting Parties for their approval, and are binding upon them following such approval.

Such proposals once approved are to be put into effect by the Parties not later than two months following approval.[173]

VI. CONSERVATION MEASURES

Joint opening and closing dates have been established as well as maximum quotas for harp seal and hooded seal.[174]

170/ Article XI
171/ Article II
172/ Article III
173/ Article VII
174/ Letter to FAO from the Royal Embassy of Norway of October 26th, 1973.

VII. IMPLEMENTATION AND ENFORCEMENT

Each Contracting Party undertakes to put into effect and enforce such measures as may be necessary to implement the Agreement.[175/]

As mentioned hereunder, the Commission is entrusted to submit proposals with regard to the establishment of inspection and control procedures.

175/ Article VIII

16. CONVENTION FOR THE CONSERVATION OF ANTARCTIC SEALS (1972)

I. GENERAL

The deficiencies of the Antarctic Treaty concerning the geographical area to which the recommendations formulated by the ATCM apply and the optional character of the interim guide-lines have already made themselves felt.

In 1966, at the 4th ATCM, the representative from U.K. submitted a working paper for an International Agreement on the conservation of fauna on Antarctic floating ice with special reference to pelagic sealing. This document was mainly based upon a report prepared by the Secretary of the SCAR Working Group in Biology. It contained a number of principles with alternatives, for possible inclusion in an International Agreement. In order to complete the necessary scientific data, the representatives to the ATCM recommended to their Governments that they encourage SCAR to continue its interest in the matter relating to Antarctic pelagic sealing and to prepare reports, from time to time, on this subject.[176/]

At the fifth ATCM the representatives had preliminary exchanges of view on a draft Convention and they recommended to their governments that before the next consultative meeting they study the draft Convention with a view to its consideration at that meeting.[177/]

At the sixth ATCM in 1970, it was decided to consider the draft Convention outside the framework of the Antarctic Treaty since the conservation of seals in the sea does not fall within the scope of the latter, and it is of interest to countries which are not parties to the Antarctic Treaty. In this connection, informal meetings were held, separate from the ATCM. As a result of the exchange ofviews a new draft Convention was drawn up. A consensus was reached at the meeting that representatives would transmit the draft Convention to their Governments for consideration.[178/]

Finally, at the invitation of the U.K. Government, a conference comprising the delegations from the original Signatory States of the Antarctic Treaty met in London

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176/ Recommendation IV-22

177/ Recommendation V-8

178/ Report of the 6th ATCM, "The Polar Record," Vol.15, No.98, 1971.p.730-731

from 3 - 11 February 1972 and adopted a Convention for the Conservation of Antarctic Seals.[179] The U.K. Government was designated as depositary. The Convention will enter into force on the thirtieth day following the date of deposit of the seventh instrument of ratification or accentance.[180]

II. MEMBERSHIP

The Convention was signed by the 12 States entitled to participate in the ATCM.[181] As of 1st November 1973 only one State - South Africa - had ratified it. The Convention is open for accession by any State which may be invited to accede with the consent of all the Contracting Parties.[182]

III. AREA OF APPLICATION

The Convention applies to the seas South 60° South latitude.[183] The Antarctic continent and the islands surrounding it remain regulated by the provisions of the Antarctic Treaty and the recommendations formulated by the ATCM. There would seem to be no doubt that floating ice and pack ice are covered by the expression "seas" used in the Convention.

The latitude 60° South corresponds to the area which is covered by the Antarctic Treaty. It should be noted that the first preliminary report of the Working Group on Biology of SCAR had considered the limit of 50° South latitude. In fact, certain species covered by the Convention (e.g., the southern Fur Seal, Arctocephalus spp.) live both inside and outside the Convention area.[184] This is probably the reason why the Convention provides[185] that the Contracting Parties shall, in accordance with their internal law, report to each other and to SCAR, for consideration, statistics relating to the Antarctic seals to which the Convention applies which have been killed or captured in the area of floating ice north of 60° South latitude.

179/ I.L.M. 1972, p.251

180/ Article 13

181/ Argentina, Australia, Belgium, Chile, Romania, Japan, New Zealand, Norway, South Africa, U.K., U.S.S.R., U.S.A.

182/ Article 12

183/ Article I (1)

184/ See Charles A. Repenning, Richard S. Peterson, and Carl L. Hubbs: "Contribution to the systematics of the Southern fur seal." Antarctic Pinnipedia; W.H. Burt, editor, American Geophysical Union, Antarctic Series, Vol.18, Washington, 1971, p.7 and 8.

185/ Article 5 (6)

IV. SPECIES COVERED

The Convention may be applicable to any or all of the following species:[186]

- Southern Elephant Seal (Mirounga leonina);
- Leopard Seal (Hydrurga leptonix);
- Weddell Seal (Leptonychotes weddelli);
- Crabeater Seal (Lobodon carcinophagus);
- Ross Seal (Ommatophoca rossi);
- Southern Fur Seal (Arctocephalus spp.).

It should be noted that the draft Convention drawn up in Tokyo in 1970 included the Southern Sea Lion (Otaria byronia) but this species was deleted by the 1972 London Conference.

V. ADOPTION, AMENDMENT AND ENTRY INTO FORCE OF REGULATORY MEASURES

Measures regulating the sealing operations are specified in an Annex which forms an integral part of the Convention.

Under the Convention, the Contracting Parties may adopt other measures with respect to the conservation, scientific study and rational and human use of seal resources, prescribing, inter alia:

- permissible catch;
- protected and unprotected species;
- open and closed season;
- open and closed areas, including the designation of reserves;
- the designation of special areas where there shall be no disturbance of seals;
- limits relating to sex, size or age for each species;
- restrictions relating to time of day and duration, limitation of effort and methods of sealing
- types and specifications of gear and apparatus which may be used;
- catch return and other statistics and biological records;
- procedure for facilitating the review and assessment of scientific information;
- other regulatory measures including an effective system of inspection.[187]

186/ Article 1 (2)

187/ Article 3 (1)

SCAR may suggest amendments to the Annex but formal proposals of amendments are submitted to the depositary Government only by the States party to the Convention. The depositary Government transmits the proposals to all Contracting Parties. Each such proposed amendment becomes effective for all Contracting Parties six months after the notification to the Contracting Parties if within 120 days of the notification date, no objection has been received, and two-thirds of the Contracting Parties have notified the depositary of their approval.

If an objection is received, the matter is referred to the next meeting of the Contracting Parties.[188] If unanimity is not reached at the meeting but two-thirds of the Contracting Parties approve the amendment, it becomes effective for those Contracting Parties.

The Convention provides that, after commercial sealing has begun, any Contracting Party may suggest the establishment of a permanent commission and of a scientific committee. [189]

VI. REGULATORY MEASURES.

The specific regulations contained in the annex may be summarized as follows:

1. Permissible catch

Annual catch quotas are provided for:

- Crabeater Seals (Lobodon carcinophagus) : 175.000
- Leopard Seals (Hydrurga leptonix) : 12.000
- Weddell Seals (Leptonychotes weddelli) : 5.000

For this purpose, a year is intended to run from 1st July to 30th June.[190]

There is no provision regarding the apportionment of the global catch quota.

When an industry has started, a report of the number of seals of each species killed or captured has to be made to SCAR. SCAR must notify the depositary, which will report to the Contracting Parties, when it estimates that the sealing season's permissible catch limit for any species is likely to be exceeded.[191] At their 1972 meeting, the SCAR Sub-Committee of Specialists on Seals recommended that the sealing

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188/ These meetings shall be held at least every five years (Article 7)

189/ Article 6

190/ Annex, paragraph 1

191/ Article 5 (5)

vessels transmit the required information by radio telegrammes at weekly intervals. The U.K. member was requested to assume the responsability for estimating the dates on which the permissible catch limit would be reached.[192]

2. Protected species

Killing or capturing of Ross Seals (Ommatophoca rossi), Southern Elephant Seals (Mitounga leonina) and Fur Seals (Arctocephalus spp.) is completely forbidden. Killing or capturing of Weddell Seals (Leptonychotes weddelli) one year old or older is forbidden between 1st September and 31st January inclusive.[193]

3. Closed season and sealing season

Killing or capturing all species of seals is forbidden between 1st March and 31st August inclusive.[194]

4. Sealing zones

The Convention area is divided into the same six sealing zones as defined in the interim guide-lines for the voluntary regulation of Antarctic pelagic sealing recommended by the 5th ATCM. Each season, one of these zones shall be closed in turn to all sealing operations.[195]

5. Seal reserves

Three seal reserves in which it is forbidden to kill or capture all seals are established.[196] At its 1972 meeting, the SCAR Sub-Committee of Specialists on Seals discussed the desirability of establishing additional seal reserves.[197]

192/ Report of the Sub-Committee of Specialists on Seals from the Working Group on Biology. SCAR Bulletin No.43, January 1973, Polar Record, Vol.16, No.103, 1973, p.649

193/ Annex, para.2

194/ Annex, para.3

195/ Annex, para.3

196/ The area around the South Orkmov Islands between 60°20' and 60°56' South latitude, and 44°05' and 46°25' West longitude. The area of the Southwestern Ross Sea south of 76°South latitude, and West of 170°West Longitude. The area of Edisto Inlet south and west of a line drawn between Cape Hallet at 72°19' South latitude, 170°18' East longitude, and Helm Point at 72°11' South latitude, 170°00 East longitude.

197/ Loc.cit., p.649, 650.

6. Exchange of information

Contracting Parties must provide yearly to other Contracting Parties, and to SCAR, information on:

- the characteristics of the vessels and crews involved in sealing;
- the number, age, sex etc.. of seals taken by zones and months;[198]

7. Sealing methods

SCAR is invited to report on methods of sealing and to make recommendations with a view to ensuring that the killing or capturing of seals is quick, painless and efficient.

8. Exceptions

Notwithstanding the provisions of the Convention, any Contracting Party may issue permits to kill or capture seals in limited quantities for the following purposes:

- to provide indispensable food for men and dogs;
- to provide for scientific research;
- to provide specimens for museums, etc.[199]

VII. ENFORCEMENT OF REGULATORY MEASURES

In its present form the Convention provides merely that the Contracting Parties agree that the seals shall not be killed or captured within the Convention area by their nationals or vessels under their respective flags except in accordance with the provisions of the Convention.[200]

The function of controlling the effective implementation of the regulatory measures contained in the Annex was debated at length during the 1972 London conference. The working paper presented in 1966 by the U.K. to the 4th ATCM stressed the need for inspecting sealing vessels on their return to home port. The U.K. expressed the opinion that it was most desirable that governments should, if requested by another government, provide opportunity for observation of the enforcement measures. The Convention merely states that, in the future, the Contracting Parties may adopt other regulatory measures including an effective system of inspection.[201]

198/ Annex, para.6
199/ Article 4 (1)
200/ Article 2
201/ Article 3 (1) (K)

Moreover, Article 6 (1) provides that, at any time after commercial sealing has begun, a Contracting Party may propose that a meeting be convened with a view to establishing an effective system of control including inspection over the implementation of the provisions of the Convention.[202]

202/ The solution adopted by the London conference seemed too timorous to the USA delegation which made a statement (appended to the Final Act of the Conference) in which it expressed the opinion that "the Convention should contain stronger provisions for the observation of operations and enforcement of regulations, especially with regard to the use of Observers of the Contracting Parties with each other's sealing expeditions."

	CRABEATER SEAL (Lobodon carcinophagus	LEOPARD SEAL (Hydrurga leptonix)	WEDDELL SEAL (Leptonychotes weddelli)	SOUTHERN ELEPHANT SEAL (Mirounga leonina)	ROSS SEAL (Ommatophoca rossi)	SOUTHERN FUR SEAL (Arctocephalus spp.)
Complete protection				Yes	Yes	Yes
Sealing season	1 September to the last day of February		One year old or older: 1 February to last day of February Others: 1 September to the last day of February			
Closed areas	1. Three seal reserves in which killing or capturing are forbidden: - the area around the south Orknov Islands between 60°20' and 60°56' South latitude, and 44°05' and 46°25' West longitude; - the area of the southwestern Ross Sea south of 76° South latitude and west of 170° West longitude; - the area of Edisto Inlet south and west of a line drawn between Cape Hallet at 72°19' South latitude; 170°18' East longitude, and Helm Point at 72°11' South latitude, 170°00' East Longitude. 2. Closing every year in turn of one of the following six sealing zones: - 1. between 60° and 120° West longitude; - 2. between 0° and 60° West longitude together with that part of the Weddell sea lying westwards of 60° West longitude - 3. between 0° and 70° East longitude; - 4. between 70° and 130° East longitude; - 5. between 130° East longitude and 170° West longitude; - 6. between 120° and 170° West longitude.					
Annual Quotas	175.000	12.000	5.000			

17. U.S. - SOVIET AGREEMENT ON COOPERATION IN THE FIELD OF ENVIRONMENTAL PROTECTION (1972)

1. On May 23, 1972, USA and USSR signed in Moscow an Agreement on Cooperation in the Field of Environmental Protection. The aim of the cooperation between the two countries is to work out measures to prevent pollution and its effects on the environment and to develop the basis for controlling the impact of human activities on nature. The Agreement provides for several fields of investigation including:

- the preservation of nature and the organization of preserves;
- Arctic and sub-arctic ecological systems.

2. A U.S. - Soviet Joint Commission in the Field of Environmental Protection is established to approve concrete measures and programmes of cooperation and make appropriate recommendations to the two Governments. The Joint Commission meets once a year in Washington and Moscow alternately.

Between the sessions, two coordinators, designated by each Party, maintain contact between the U.S. and Soviet sides, supervise the implementation of cooperative programmes, and coordinate the activities of Organizations participating in environmental cooperation.[203/]

3. The first meeting of the Joint Commission was held in Moscow, from 18 to 21 September 1972. As provided for in the Agreement of May 23, 1972, it approved concrete measures and programmes and, inter alia, a project dealing with the conservation of rare and endangered species of animals. Both sides agreed upon the desirability to prepare:

- a Soviet-American Convention on Conservation of Rare Species Migrating Between the USSR and USA;
- other international agreements on conservation of wild life in need of special protection.

Joint projects also include research on the preservation and management of various marine and other mammals, specifically Polar Bears and whales of the North Pacific, including the bowhead, gray and fin whales.

4. A working group for the conservation of rare and endangered species of animals and plants and general wildlife conservation and management has been appointed. It is provided that, as necessary, appropriate sub-groups will be organized (for example, for whales).

203/ The lead agencies for the US are the Department of the Interior and the National Oceanic and Atmospheric Administration of the Department of Commerce, and for the USSR, the Soviet Academy of Science and the Ministry of Agriculture.

18. CONVENTION ON INTERNATIONAL TRADE OF THREATENED SPECIES (1973)

I. GENERAL

On March 3rd, 1973, at the end of a plenipotentiary conference held in Washington from February 12th, a Convention on International Trade in Endangered Species of Wild Fauna and Flora was signed. The signing of this Convention was the result of international efforts which were initiated at Nairobi in 1963 when the eighth General Assembly of IUCN proposed to all States to elaborate such a Convention.[204] Subsequently, several draft Conventions were circulated (by IUCN, USA and Kenya). The 1972 U.N. Conference on the Human Environment recommended that a plenipotentiary conference be convened as soon as possible, under appropriate governmental or non-governmental auspices, to prepare and adopt a Convention on the export, import and transit of certain species of wild animals and plants.[205]

The conference was finally convened by the Government of the U.S.A.. Eighty States were represented [206] and eight other States were represented by observers.[207]

The conference adopted:

- a final act with three resolutions annexed;
- a Convention consisting of a preamble, 25 articles and 4 appendices;

Appendices I to III include species of specimens to which the text applies. Appendix IV sets for a model export permit and the information it should contain.

204/ Resolution V of the 8th General Assembly of IUCN

205/ Recommendation 99.3

206/ **Afghanistan**,Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Burundi, Cameroon, Canada, Central African Republic, Columbia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany (Fed.Rep.of) Ghana, Greece, Guatemala, Guyana, Honduras, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kenya, Khmer Republic, Korea (Repof), Lebanon, Luxembourg, Malagasy Republic, Malawi, Mauritius, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Pakistan, Paraguay, Panama, Peru, Philippines, Poland, Portugal, Rwanda, Senegal, Sierra Leone, South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Togo, Tunisia, Turkey, U.S.S.R., U.K., U.S.A., Upper Volta, Venezuela, Vietnam (Rep.of) and Zambia.

207/ Chad, Chile, Ecuador, Hungary, Ivory Coast, Jamaica, Kuwait, and Norway.

The Convention which shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession [208] had not yet come into force at the end of 1973. It does not establish a special international body but entrusts the UNEP with specific functions (inter alia: arrangements of meetings, scientific and technical studies, recommendations for the implementation of the aims and provisions of the Convention). In addition, it provides that a Conference of the Parties shall meet at least every two years.

II. MEMBERSHIP

As there are no special conditions contained in the Convention, all States may sign (until December 31st, 1974), ratify, accept or approve the Convention.[209]

III. AREA OF APPLICATION

The Convention does not contain provisions regarding its geographical coverage. In some cases, however, it is expressly mentioned that the relevant provisions only concern species from specific areas (for instance: Australian populations of dugongs).

It should be noted that the concept of applying the provisions of the Convention to endangered species taken in the marine environment not under the jurisdiction of any State, was not included in the IUCN draft and appeared for the first time shortly before the conference. In the minds of many delegations, this concept raised very serious questions as to practicality and also to its effect on their position relative to the territorial sea and to other conservation agreements. After intensive negotiations [210] the concept was adopted and several high seas marine mammals were included in the Appendices.

IV. SPECIES OF MARINE MAMMALS COVERED

The species of marine mammals covered by the Convention are listed in Appendices I and II.

208/ Article XXII - the depositary government is the Swiss Confederation.

209/ Articles XIX, XX and XXI.

210/ See Report of the U.S. Delegation submitted to the Secretary of State, Department of State Bulletin, Vol.LXVIII No.1768, May 14th, 1973,p.613.

Appendix I includes several species of

- Cetacean: grey whale (Eschrichtius robustus (glaucus)), blue whale (Balaenoptera musculus), humpback (Megaptera novaeangliae), right whale (Balaena mysticetus and Eubalaena spp.) and gangetic dolphin (Platanista gangetica).
- Pinnipedian: Monk seals (Monachus spp.), Northern Elephant seal (Mirounga angustirostris).
- Sirenian: Dugong from Australia (Dugong dugong) and manatee (Trichechus manatus and Trichechus inunguis).
- Carnivores: Sea otter (Enhydra lutris nereis)

Appendix II includes species of:

- Pinnipedians: fur seal (Arctocephalus australis, A. galapagoensia, A. philippii, A. townsendi) and elephant seal (Mirounga australis and Mirounga leonina).
- Sirenians: dugong (Dugong dugong), and West African manatee (Trichechus senegalensis).

Regulations concerning species listed in appendices I and II are binding on all Contracting States except those which have expressly reserved their position. Appendix III includes only species of which any other Contracting State has requested the inclusion. In that case, any other Contracting State may make a reservation in respect to this inclusion (see below).

V. ADOPTION, AMENDMENT AND ENTRY INTO FORCE OF REGULATORY MEASURES

I. The Convention

The Convention itself contains all the regulatory provisions. It can only be amended at an extraordinary meeting of the Conference of the Parties convened by the UNEP upon the written request of at least one-third of the Parties.

Any amendment must be adopted by a two-third majority and will enter into force for the parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment.[211/]

211/ Article XXII

2. Appendices I and II

a) At meetings of the conference of the Parties, appendices I and II may be amended by a two-third majority of the Parties. Amendments so adopted enter into force 90 days after the meeting except for those States which make a reservation.

b) Between the meetings of the conference of the Parties, a postal procedure is provided for. Upon receiving the text of a proposed amendment, the secretariat (i.e. UNEP) must communicate it to the Parties. It must also consult intergovernmental bodies having a function in relation to those species, especially with a view to obtaining the scientific data these bodies may be able to provide, and to ensure co-ordination with any conservation measures enforced by such bodies.

After these exchanges of information,

- if no objection to the proposed amendment is received within a specific time, the amendment enters into force 90 days later for all Parties except those which make a reservation.

- if an objection is received from any Party, the proposed amendment is submitted to a postal vote. If within 60 days votes are received from at least one half of the Parties the proposed amendment is considered as adopted if it obtains a two-third majority from those States voting. In that case the amendment enters into force 90 days later for all Parties except those which make a reservation. If not enough votes are received, the proposed amendment is referred to the next meeting of the Conference of the Parties for further consideration.[212/]

3. Appendix III

Particular species may be included in Appendix III upon the request of any Party which identifies this species as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation and as needing the co-operation of other Parties on the control of trade. Any Party may enter into reservation with respect to such inclusion in Appendix III. In that case, this State is not bound by this part of Appendix III.

212/ Article XV

VI. INTERNATIONAL RULES LAID DOWN BY THE CONVENTION

Trade in specimens of species listed in Appendix I is authorized only in exceptional circumstances. A permit system, utilizing both import and export licences requires for such trade that the exporting State certify that specified criteria have been met in order to assure that the survival of these species is not further endangered. There are also permit requirements for re-export of specimens of such species.[213]

Trade in specimens of species listed in Appendix II is subjected to a permit system utilizing export licences. This allows the States where such species are found to monitor exports from their territories and, if necessary, take measures to limit these exports. Re-exports are also covered.[214]

Trade in specimens of species included in Appendix III requires export permits from the State which has included the species in Appendix III. The import of specimens of these species from States other than the State that includes the species in that Appendix requires prior presentation of a certificate of origin or, in the case of re-export, a certificate from the State of re-export.

The Convention provides for specific measures concerning species introduced from the sea. The introduction from the sea is itself treated as importation for the purpose of the Convention and can occur only after certification by the State of introduction that certain specific criteria have been met. There is an exception for a State Party to the Convention, and Party also to any other Treaty, Convention or International Agreement under the provision of which protection is afforded to marine species included in Appendix II. With regard to those species, such a State is relieved of the obligations imposed on it by the Convention in so far as specimens of those species are taken by ships registered in that State, and in accordance with the provisions of the other Treaty, Convention, or International Agreement.[215]

VII. IMPLEMENTATION AND CONTROLS

The Parties must take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof. These shall

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213/ Article III
214/ Article IV
215/ Article XIV (4)

include measures:

(a) to penalise trade in or possession of such specimens, or both, and

(b) to provide for the confiscation or return to the State of exports of such specimens.

Each Party must prepare periodic reports on its implementation of the Convention and transmit to the secretariat

- an annual report containing a summary of information about the number and types of permits and certificates granted, the State with which such trade occured, the number or quantities and type of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

- a biennal report on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention.[216/]

216/ Article VIII